

CM No. 2454-C of 2023 in/and RSA No.637 of 2023 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.116

Case No.: CM No. 2454-C of 2023 in/and
RSA No.637 of 2023 (O&M)

Date of Decision : July 19, 2023

Iqbal and others Applicants/Appellants
vs.
Rozdar (since deceased) through
his LRs and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Abhimanyu Singh, Advocate
for the applicants/appellants.

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GURBIR SINGH, J. :

1. **CM-2454-C-2023** : This application has been moved under Section 5 of the Limitation Act, read with Section 151 CPC, for condonation of delay of 2488 days in filing the accompanying appeal.

2. Learned counsel for the applicant has submitted that the judgment and decree was passed on 03.08.2015. The appeal was filed. The applicants were not aware about the passing of judgment by the Appellate Court and were under the belief that the appeal was still pending. The applicants contacted their counsel in the Court below. They were informed that the appeal was decided against them. However, he did not advise them for filing Regular Second Appeal. Thereafter, in the year 2020, there was COVID-19 pandemic. So, the applicants could not proceed further.

Immediately thereafter, the applicants applied for the copy of judgment and

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decree and filed the present appeal. The application is supported by affidavit.

3. The applicants filed suit for declaration and joint possession with consequential relief of permanent injunction. The learned Trial Court, vide judgment and decree dated 31.10.2014, dismissed the suit *inter alia* on the ground that the suit is barred by limitation. The appeal filed by the applicants against the aforesaid judgment and decree was also dismissed vide judgment and decree dated 03.08.2015 passed by First Appellate Court. The finding recorded by the learned Trial Court was affirmed, concluding that the suit was barred by limitation.

4. The learned Trial Court, in its judgment dated 31.10.2014, had specifically observed that there was admission on the part of the applicants (plaintiffs therein) that they were aware about the fraud in the month of July 2009 and they also filed criminal complaint against the respondents. The learned Trial Court further held that relying on the case of Abdul Rahim vs. Sk. Abdul Zabbar – 2009 (2) RCR (Civil) 934, whereby this Court has held that starting point of limitation is the date of knowledge of the alleged fraud. Referring to Section 56 of the Limitation Act, the learned Trial Court observed that limitation to file the suit was three years from the accrual of the cause of action.

5. The suit for declaration and joint possession has been certainly filed after three years on coming to know about the fraud.

6. The learned Trial Court has rightly dismissed the suit as time barred. No sufficient cause has been shown for condonation of delay in filing the present appeal. The explanation given by the applicants is not

satisfactory at all. There should be some reason to condone the delay in filing the appeal. In the case of Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors. - Civil Appeal No. 7696 of 2021, it is held by Hon’ble Supreme Court that there should be sufficient reason to condone the delay in filing an appeal.

7. Since there is no sufficient reason and no ground is made out to condone the delay of 2488 days in filing the accompanying appeal, the application is hereby dismissed.
8. Consequently, the main appeal i.e. RSA No.637 of 2023 is also dismissed as time barred.
9. Pending applications, if any, shall stand disposed of along with this judgment.

July 19, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.