

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-16970-C-2019 in/and RSA-5945-2019

Date of Decision: 13.09.2023.

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KARTAR SINGH

.....Appellant

Versus

MOHINDER KAUR

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Balbir Singh Jaswal, Advocate for the applicant/appellant.

GURBIR SINGH, J (ORAL)

1. The present regular second appeal has been filed by the appellant/defendant against the judgment and decree dated 04.10.2018 passed by the learned District Judge, Amritsar whereby his appeal against the judgment and decree dated 11.08.2017 passed by learned Civil Judge (Junior Division) Ajnala, was dismissed. The suit filed by the respondent/plaintiff for permanent injunction was decreed and appellant/defendant was restrained from interfering in the peaceful possession of the suit land.

2. The appeal is accompanied with an application i.e. CM-16970-C-2019 seeking condonation of delay of 304 days in filing the appeal.

3. In the application, it has been submitted that the applicant/appellant has submitted applicant/appellant was not having any funds to prefer the appeal. He borrowed money from his relatives on 24.08.2019 and contacted his counsel on 31.08.2019 to file the appeal. However on 02.09.2019, certain objections were raised by the Registry and on removal of those objections, the present appeal has been filed. In this way, delay of 304 days has occurred in filing the present appeal.

4. I have heard the submissions of learned counsel for the applicant/appellant.

5. The suit was filed by the plaintiff/respondent on the ground that the defendant/appellant had executed registered mortgage deed on 25.07.1984 in favour of Tehal Singh, husband of the plaintiff/respondent. Tehal Singh died on 21.08.1984 and after the death of Tehal Singh, the plaintiff is in cultivating possession of the suit land as legal heir and mortgagee. It is well settled law that mortgagee cannot be dispossessed by the mortgagor from the land without redeeming the mortgage land.

6. The defence taken in the written statement before the Court below is that mortgage deed was registered on 25.07.1984 for a period of three years and after passing of three years, the defendant has paid the mortgage amount to the husband of the plaintiff and possession was delivered to the defendant but due to inadvertence of the revenue staff, the entry regarding redemption was not incorporated in the revenue record and the plaintiff wants to take undue advantage of the said entries. It is argued that the entry in the revenue record in the name of dead person has no evidentiary value.

7. The learned trial Court held that Tehal Singh died on 21.08.1984 and after his death, plaintiff, being legal heir, is in cultivable possession of the suit property. The version of the defendant that he tendered the mortgage amount to the husband of the plaintiff and delivered the suit property, is false since Tehal Singh had already died on 21.08.1984. The defendant had tried to mislead the Court as well as revenue court by stating false facts. The plaintiff is still in possession of the suit land. So suit was dismissed. The learned Appellate Court dismissed the appeal observing that plaintiff is proved to be in possession of the property on the date of filing of the suit.

8. The appellant has challenged the concurrent findings of fact recorded by the Courts below.

9. The applicant/appellant has not disclosed about his financial status. Meager amount of Court fee was required to be paid with the instant appeal. The applicant/appellant has just made the statement that he could not arrange the funds for filing the appeal. It is not disclosed from whom he was arranging the funds. When person does not disclose his financial status, then it cannot be believed that he could not arrange the funds. No doubt, at the time of deciding the application for condonation of delay in filing the appeal, Courts should be liberal and justice oriented approach is required to be adopted in exercise of power under Section 5 of the Limitation Act but the Court cannot ignore that successful litigant has acquired certain rights on the basis of judgment under challenge and a lot of time is consumed at various stages of litigation apart from incurring the costs. If cause shown by the applicant/appellant that he was not negligent and delay was bonafide then delay can definitely be condoned but if explanation given by the applicant seems to be afterthought or concocted, then delay cannot be condoned. The discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. The expression sufficient cause cannot be liberally interpreted if negligence, inaction or lack of bonafide is attributed to the party. I draw support from the case Basawaraj and Anr. Vs. Special land Acquisition Officer, (2013) 14 SCC 81, an authority of Hon'ble Apex Court. In the case in hand, the version of the applicant/appellant is that he could not raise the funds for a period of more than one year for filing the appeal. The explanation given by the applicant/appellant is an afterthought and is only to mislead the Court to condone the delay.

10. This Court is of the view that applicant/appellant has failed to give satisfactory explanation for condonation of delay, so delay in filing this case cannot be condoned.

11. Accordingly, the application seeking condonation of delay stands dismissed. The main appeal also consequently stands dismissed being barred by limitation.

(GURBIR SINGH)
JUDGE

13.09.2023

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No