

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2562 of 2019 (O&M)

Reserved On: 20.01.2024
Pronounced On: 05.03.2024

Budh Pal
... Petitioner(s)

Versus

Shiv Charan and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kunal Dawar, Advocate, Advocate
for the petitioner(s).

Mr. Abhishek Goyal, Advocate
for the respondents.

Anil Kshetarpal, J.

1. Introduction and Brief Facts

1.1 The petitioner has filed this revision petition to challenge the correctness of the order passed by the First Appellate Court refusing to condone the delay of 5 years 1 month and 3 days in filing the appeal

1.2 In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Smt.Manju Lata was owner of plot No. 20 measuring 70 square yards. It is alleged that she entered into an agreement to sell with respect to the aforesaid plot in favour of Shiv Charan (respondent No.1 herein). On 15.02.2006, Shiv Charan filed a suit for possession by way of specific performance of the agreement to sell in which Smt.Manju Lata was proceeded against *ex parte* on 2.04.2000.

Ultimately, the suit was decreed on 27.07.2011 while directing Shiv Charan

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to deposit the balance amount within a period of two months. In the execution proceedings, the sale deed in favour of Shiv Charan was executed and the warrants of possession were issued on 25.05.2015. The Bailiff came for the execution of the warrants of possession on the property in question on 15.07.2015. It is claimed by the petitioner-Budh Pal that he came to know of the *ex parte* judgment and decree dated 27.07.2011. Budh Pal claims that Smt.Manju Lata vide sale deed dated 28.08.2006 sold the aforesaid plot in his favour. On 30.07.2015, the petitioner filed the following three applications:

- I) The objections under Section 47 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) in the execution proceedings.
- II) An application under Order I Rule 10 CPC for impleading him as a party in the execution proceedings.
- III) An application under Order IX Rule 13 CPC for setting aside the *ex parte decree*.

1.3 On 26.08.2016, all the three applications were dismissed by a common order. On 13.09.2016, the petitioner also filed an appeal against the judgment and decree dated 27.07.2011 along with an application for condoning the delay of 5 years, 1 month and 13 days. The condonation of delay was sought under Section 5 and 14 of the Limitation Act, 1963 (hereinafter referred to as “the 1963 Act”). He also filed an appeal against the dismissal of the application filed under Order IX Rule 13 CPC in which stay of further proceedings before the Executing Court was granted. He also

filed Civil Revision No. 6329 of 2016 and Civil Revision No. 6330 of 2016

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against the dismissal of objections under Section 47 CPC and order dismissing the application under Order I Rule 10 CPC. On 30.09.2016, both the aforesaid revision petitions were disposed of on the very first date of hearing with the following order:-

“By this common order, I shall dispose of two Civil Revision Nos.6329 and 6330 of 2016.

Civil Revision No.6329 of 2016 has been filed against the order dated 26.8.2016.

The petitioner, who is stated to be a subsequent vendee as per the sale deed dated 28.8.2006, had filed an appeal by seeking leave of the Court. The said appeal was accompanied by application seeking condonation of delay, for, against the aforementioned judgment and decree, an application under Order 9 Rule 13 CPC along with application under Order 1 Rule 10 CPC and objections under Section 47 CPC were moved in 2015, but the same have been dismissed by the trial Court vide common order dated 26.8.2016. However, against the dismissal of application under Order 9 Rule 13 CPC, an appeal has been filed in the Lower Appellate Court in which an ad-interim injunction has been granted, therefore, the present revision petition.

Since the petitioner has filed an appeal against the judgment and decree, I am of the view that in view of the order passed on the application under Order 1 Rule 10 CPC, objections become redundant, but the fact remains that the

appeal had been accompanied by the application seeking condonation of delay as the petitioner was not properly legally advised and had not availed the proper remedy.

Mr.Kul Bhushan Sharma, learned counsel for the petitioner, during the course of hearing, given an undertaking to withdraw the appeal filed against the dismissal of the application under order 9 Rule 13 CPC. In my view, once the appeal is stated to have been filed after the previous date, i.e., during the interregnum and accompanied by application, the period spent in the aforementioned litigation shall be considered by the Lower Appellate Court sympathetically while granting the relief and deciding the application. In my view, once the petitioner has availed the remedy of appeal, revision petitions have become infructuous.

The dismissal of the application/objection would not come in the way of the petitioner in the pending appeal and the Lower Appellate Court shall decide the same uninfluenced by the findings rendered in the impugned order.

In case, an application for stay is moved in the freshly instituted appeal seeking leave of the Court, the same shall be considered in view of the fact that in the appeal against the dismissal of the application under Order 9 Rule 13 CPC, there was an interim stay.

Till decision of application seeking condonation of delay, dispossession shall remain stayed.”

1.4 As undertaken, the petitioner withdrew his appeal which was filed against the dismissal of his application under Order IX Rule 13 CPC. Thereafter, on 25.02.2019, the Additional District Judge has dismissed the application while refusing to condone the delay. This revision petition has been filed to assail the correctness of the aforesaid order.

2. Arguments put forth by the learned counsel representing the parties.

2.1 Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the convenience note filed by the learned counsel representing the petitioner and the documents supplied by the learned counsel representing the respondents.

2.2 The learned counsel representing the petitioner has submitted that the Additional District Judge has overlooked the order passed by the High Court on 30.09.2016. He further submits that the petitioner has now been left with no remedy as he has already withdrawn his appeal filed against the dismissal of his application under Order IX Rule 13 CPC.

2.3 On the other hand, the learned counsel representing the respondents contends that a huge delay of more than five years should not be condoned as the petitioner is a purchaser *lis pendens* and hence, he does not have any independent right. The sale in his favour is subject to the decision of the main suit.

3. Discussion by this Court

3.1 This Court has considered the submissions of the learned counsel representing the parties and carefully read the impugned order passed by the Additional District Judge.

3.2 In the considered opinion of this Court, the Additional District Judge has not examined the case in a proper perspective. In para 6 of the impugned order, certain facts have been noticed. In para 7, an observation about the transferee pendente lite has been made. Thereafter, the Court refers to the various judgments of the Supreme Court in paras 9 to 12. In para 13, the First Appellate Court has concluded as under:-

“13. In view of the above facts and law, the application for condonation of delay 5 years 1 month 3 days is hereby dismissed and according appeal is also dismissed being time barred.”

3.3 While deciding the application filed under Section 5 read with Section 14 of the 1963 Act, the Court is required to critically analyze the respective stands taken by the parties and thereafter, arrive at a conclusion as to whether the petitioner has successfully furnished the sufficient explanation for failing to file an appeal within the prescribed period of limitation. Unfortunately, the First Appellate Court has not even adverted to those grounds. Secondly, the observations made by the High Court in the order dated 30.09.2016, have entirely been overlooked. The Court also failed to take note of the fact that the petitioner has already withdrawn his appeal filed against the dismissal of the application under Order IX Rule 13 CPC and on dismissal of this application; all his remedies have exhausted.

3.4 Moreover, it is significant to note that the civil suit filed by Shiv Charan has not been contested by anyone. The *ex parte* judgment and decree was passed in his favour. The correctness of the aforesaid judgment and decree is required to be examined by the First Appellate Court. As per

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Section 96 CPC, the first appeal is a statutory remedy available to a decree holder. The First Appellate Court is the last Court of appreciation of both fact and law. In *Bhanu Kumar Jain v. Archana Kumar and Another (2005) 1 SCC 787*, it has been observed that such a right shall not be curtailed nor shall any embargo be fixed thereupon unless the statute expressly or by necessary implication bars it. In *B.Madhur Goud v. B. Damodar Reddy (2012) 12 SCC 693*, the Supreme Court observed that the expression “sufficient cause” used in Section 5 of the 1973 Act is wide enough to enable the Courts to apply the law in a significant manner so that it serves the ends of justice rather than narrowing it down. The provisions of the 1963 Act are meant to see that the parties do not resort to the dilatory tactics but seek their remedy properly (please see observations in *N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123*). As already noticed, there is no finding by the First Appellate Court that the petitioner has adopted any dilatory tactics or he is an unscrupulous litigant.

3.5 As regards the argument of the learned counsel representing the respondents, it shall be noted that in the present case, the petitioner was not a party to the suit. Smt. Manju Lata, the original owner, was proceeded against *ex parte*. She also did not contest the suit. The dispute is with regard to a small plot measuring 70 square yards. It is not the case of the respondents that the petitioner is the relative of Smt. Manju Lata. The petitioner has purchased the property vide a registered sale deed executed in his favour on 28.08.2006. At that time, the suit was pending. Shiv Charan also did not inform the Court about the said development.

of the considered view that the petitioner deserves one opportunity to contest the case on merits. Hence, the present revision petition is allowed. The delay of 5 years 1 month and 3 days in filing the first appeal is condoned under Section 5 read with Section 14 of the 1963 Act. The first appeal is restored to its original number while directing the First Appellate Court for its expeditious disposal. The parties through their learned counsel are directed to appear before the First Appellate Court on 05.04.2024.

3.7 The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 05, 2024
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No