

LPA-2053-2023 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-2053-2023 (O&M)

DATE OF DECISION: MAY 9, 2024

DR. R.K. JAIN @ RAJESH KR. JAIN

...APPELLANT

VERSUS

THE REGISTRAR GENERAL,
HIGH COURT OF PUNJAB AND HARYANA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL.
HON'BLE MR. JUSTICE DEEPAK MANCHANDA.**

PRESENT: DR. R.K. JAIN, PETITIONER IN-PERSON.

DEEPAK MANCHANDA, J.

CM-5140-2023

This is an application for condonation of delay of 23 days in refiling the appeal.

For the reasons mentioned in the application, the same is allowed and the delay is condoned.

CM-5138-2023

This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 34 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay is condoned.

CM-2274-2024

Application is allowed.

Copy of SLP dated 28.6.2022 (Annexure P-7) filed against the judgement dated 13.12.2021 passed in CR-1728-2021 by this Court and

**LPA-2053-2023 (O&M)**

-2-

written submissions (Anenxure P-8) are taken on record.

LPA-2053-2023

Through this intra-Court appeal, the appellant has challenged the impugned judgement dated 08/08/2023 whereby a prayer for issuance of directions to the Registry of this Court to list the Regular Second Appeal filed by the appellant was made, where objection was raised regarding maintainability of the same, and later on Civil Revision No.1728 of 2021 was filed which was dismissed on 13/12/2021 and even the SLP preferred before the Hon'ble Supreme Court against the said order dated 13/12/2021, was dismissed in *limine* vide order dated 17/04/2023.

The facts emanating from the pleadings of this appeal are that the appellant filed one Civil Suit No.79 of 2017 for the recovery of Rs.3,52,230/- with interest against the defendant, which was partly decreed for recovery of Rs.1 lakh with interest at the rate of 9% per annum with effect from 31/08/2014 till payment vide judgement and decree dated 20/11/2017 passed by Addl. Civil Judge(Sr.Divn.), Jind. Feeling aggrieved, the appellant filed a review of said judgement and decree dated 20/11/2017 which was, however, dismissed vide order dated 29/05/2019. Again the said dismissal order was challenged by the appellant by way of Civil Appeal against the judgement and decree dated 20/11/2017 as well as the order dated 29/05/2019 dismissing the application for review, and the said appeal also did not succeed and ultimately resulted in dismissal vide order dated 19/07/2021 being time-barred. Being dissatisfied with the order dated 19/07/2021, initially, the appellant filed a Regular Second Appeal vide

**LPA-2053-2023 (O&M)**

-3-

Diary No.26160 of 2021 dated 06/08/2021, where the Registry objected to the maintainability of said appeal and the appellant was advised to file a Civil Revision. Accordingly, the appellant filed CR No.1728 of 2021, but the Single Bench of this Court dismissed the same vide order dated 13/12/2021. Thereafter the order dated 13/12/2021 was assailed through SLP (C) No.7862 of 2023 before the Hon'ble Apex Court which was also dismissed on 17/04/2023. After the dismissal of the aforementioned SLP, on the same cause of action appellant again filed CWP No.11156 of 2023 and which was also dismissed vide impugned judgement dated 08/08/2023, which is under challenge in the present intra-Court appeal.

The appellant who is present in-person contends that the impugned order is liable to be set aside as the Registry of this Court acted arbitrarily where the Regular Second Appeal filed by the appellant was not entertained and he was compelled to file a Civil Revision against the order dated 19/07/2021 and said compulsive act of the Registry is against the settled proposition of law. He further contends that the Registry of this Court could not have refused the appellant to pursue a Regular Second Appeal which was filed by him, and said refusal is also against the High Court Rules & Orders. But learned Single Judge did not appreciate the said fact while passing the impugned judgement, for which the appellant is suffering for no fault of his. To support his contentions, he has relied upon the judgement passed by the Hon'ble Supreme Court in *M/s Ramnath Exports Pvt. Ltd. vs. Vinita Mehta & Anr., 2022(3) R.C.R.(Civil) 568* and by this Court in *CR-2642-2021, titled as 'Tarlok Singh and another vs.*



Jasbir Singh and others', decided on 10.2.2022.

We have heard Dr. R.K. Jain, appellant in-person.

A perusal of pleadings would show that on 18/12/2023 this Court directed the appellant to produce a copy of SLP(C) No.7862 of 2023 titled as 'Dr. Rajesh Kumar Jain vs. Krishan Bahadur Sunar @ Krishna Bahadur Sunar and another', to ascertain whether the issue sought to be raised in the present appeal was ever taken by the appellant before the Hon'ble Supreme Court. In compliance of the said order, the appellant placed on record copy of SLP(C) and has handed over a copy of the order dated 17/04/2023 passed in SLP(C) 7862 of 2023, which was dismissed in *limine*. Further, the learned Single Judge dismissed the writ petition, which is the subject matter of this appeal, on the ground that the appellant did not raise any challenge to High Court Rules & Orders, where a provision has been provided for filing of Civil Revision against an order passed under Section 5 of the Limitation Act, 1963 declining to condone the delay. It was further observed that even objections raised by the Registry for filing of Civil Revision petition instead of filing a Regular Second Appeal were never objected to by the appellant, rather in pursuance to the same, Civil Revision No.1728 of 2021 was filed, which was ultimately dismissed on 13/12/2021 and the same was assailed in SLP which stands dismissed.

For the proper adjudication of this appeal, it would be necessary to understand the chronology of events where the appellant filed multiple litigations on the same cause of action, which were dismissed on the ground of limitation and culminated into a final order passed in SLP(C)



7862 of 2023. But the appellant did not stop here and on the same cause filed writ petition bearing CWP No.11156 of 2023, which has been dismissed vide impugned judgement dated 08/08/2023 and the same is under challenge through this appeal. The continuous litigation before filing of the present appeal has already been dealt with by the learned Single Judge of this Court in the aforesaid Civil Revision No.1728 of 2021. The relevant portion of the said order is reproduced below:-

“8. The civil suit filed by the petitioner/plaintiff having been decreed partly on 20.11.2017 and if he was not satisfied with such judgment and decree passed and wanted to challenge the same by way of filing appeal, the limitation for doing so started immediately after passing of the judgment and decree passed by the trial Court. The limitation for filing appeal against the judgment and decree passed by the trial Court to First Appellate Court is 30 days from the date of decree or order in terms of Article 116 of the Limitation Act, 1963. The limitation could not possibly be brought to a standstill by moving application for review, which was filed on 13.12.2017. Section 9 of the Limitation Act, 1963 clearly provides that where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. Therefore, the application of appellant that period spent by him in prosecuting application for review i.e. from 13.12.2017 to 29.5.2019 be deducted for the period of calculating limitation should be deducted is not acceptable. Therefore, the appeal filed was clearly time barred.

9. The appeal in this case was filed more than one year and seven months. The explanation furnished is least convincing. It was not option of the plaintiff to file application for review after about 23 days of passing the judgment and decree by the



trial Court and then start claiming that with filing of such application by him, the limitation be taken as stopped till his such application was decided and only thereafter it be taken to have been started again. Learned Additional District Judge, Jind was justified in coming to the conclusion that appeal is time barred.

10. Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

11. Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Here the petition has not been able to give any plausible or justifiable reason for condonation of delay in this case.

12. Therefore, on the ground of limitation alone, the appeal was rightly rejected. As regards the other reason given that since plaintiff had availed of remedy of filing application for review, the appeal was not maintainable. The interpretation given by learned Additional District Judge, Jind under the circumstances cannot be faulted because in terms of Order 47, an application for review can be entertained if a person considers himself aggrieved by a decree of order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order for which no appeal is allowed, which means that a person cannot take recourse to multiple remedies. Once the plaintiff after passing of judgment and decree by the trial Court had opted to get his grievances redressed by moving an application for review and the same

**LPA-2053-2023 (O&M)**

-7-

having been disposed of after a contest on merits, the plaintiff/appellant could not reagitate the matter by way of filing appeal which was hopelessly time barred.”

The order dated 13/12/2021 passed in Civil Revision shows that while dismissing the same it was specifically observed that a person cannot take recourse to multiple remedies, which are time-barred. Even the learned Single Judge in CWP No.11156 of 2023 by passing the impugned judgement dated 08/08/2023 made similar observations by saying that under the garb of said writ petition, appellant cannot be permitted to seek reopening of an order that was passed in the Civil Revision petition and attained finality and same was affirmed by the Hon’ble Supreme Court as well. Hence relisting of the closed issue as prayed in writ petition is not permissible under the law. Learned Single Judge also observed that the appellant failed to explain the compelling circumstances under which he had the compulsion of filing Civil Revision, instead of a Regular Second Appeal, which he wished to continue even through a writ petition. Moreover, a bare perusal of pleadings reveals that except for reference to previous civil litigations filed by the appellant before the various civil Courts, including the writ petition and Civil Revision petition, no reference to the dismissed SLP being final order, qua similar cause of action as raised by the appellant in this appeal, has been made. We have gone through the contents of the judgments cited by the appellant, but the same do not apply to the facts of the present case.

After examining the whole issue, we are of the view that learned Single Judge rightly dismissed the writ petition on the ground that

**LPA-2053-2023 (O&M)****-8-**

the appellant cannot be allowed to reopen the issue which has already been upheld by Hon'ble Supreme Court.

In light of the above, we do not find any perversity and illegality in the impugned judgment dated 08/08/2023 passed by the learned Single Judge. Consequently, the present appeal fails and is hereby dismissed.

(DEEPAK MANCHANDA)
JUDGE

(DEEPAK SIBAL)
JUDGE

May 9, 2024
Gulati

Whether Reportable : Yes/No
Whether Speaking/Reasoned : Yes/No