

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CR-6704-2023 (O&M)
Decided on: 12.02.2024

Santosh and others

...Petitioners

Versus

Sonia and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Punit Malik, Advocate
for the petitioners.

RITU TAGORE, J. (Oral)

1. This revision is directed against the order dated 04.10.2023 (Annexure P-4) in which learned ADJ, Gurugram dismissed the petitioners' application for non-filing of certified copy of the impugned judgment dated 18.07.2023 along with the memorandum of appeal, by the invoking the provisions of Order 41 Rule 1 CPC.
2. Learned counsel for the petitioners submits that a photocopy of the impugned judgment and decree dated 17.08.2023, downloaded from the website of the District Court, Gurugram, was appended alongwith the memorandum of the appeal. The certified copy of the decree sheet was also filed. An application seeking exemption from filing the certified copy of judgment was also submitted as same was not available despite having been applied for.
3. The learned counsel submits that dismissal of the first appeal is

harsh upon the petitioners, adversely impacting their statutory right to appeal on technical grounds. It is contended that the Court should not have dismissed the appeal based solely on technicalities. The learned counsel states that he is ready with the certified copy of the appeal and would submit the same before the learned Appellate Court. A prayer is made to allow the revision. In support of his argument referred to judgment of co-ordinate Bench of this Court in **CR No.2160 of 1994 titled ‘Maharshi Dayanand University Vs. Rajan Sahuja decided on 31.10.1995.**

4. Heard.

5. Perusal of the paper book would show that the petitioners had filed an appeal (Annexure P-1) against judgment and decree dated 08.07.2023 passed by the Court of Civil Judge (Junior Division), Gurugram whereby the suit of the plaintiff (respondents before this Court) was decreed. Annexure P-2, the case status report downloaded from the portal of District and Sessions Court, Gurugram and the photocopy of the order dated 31.08.2023 shows that the appeal was filed on that date. The learned ASJ, Gurugram passed the following order:-

“Civil Appeal received by way of assignment. It be checked and registered. Alongwith appeal, an application for stay of judgment order and decree with affidavit and an application for condonation of delay, is also filed. Moreover as per the Order 41 Rule 1 CPC, the appeal has to be preferred with a copy of judgment. But admittedly the present appeal does not have copy of judgment assailed herein nor exemption application for the same has been moved. Therefore, it is a technical error in the appeal but instead of dismissing the appeal it would be appropriate to give directions to the appellant to either move application for exemption for filing certified copy of documents within 3 days or file a certified copy of judgment failing which the appeal shall be dismissed. Now the case is

adjourned for 05.09.2023 for the needful”

6. Annexure P-3 photocopy of the order dated 02.09.2023 reveals that an application was filed to submit the certified copy of the decree sheet. The order also indicates that the Court noted that an application for exemption from filing the certified copy of the documents was already attached with the appeal. Permission was granted to place the certified copy of decree sheet on record, and appeal was adjourned for 04.10.2023 for filing certified copy of the judgment. However, on 04.10.2023, the Court dismissed the appeal for non-compliance with Order 41 Rule 1 CPC despite having been granted an extension for filing the certified copy of judgment.

7. The perusal of the paper book shows that the petitioners had submitted an application before the learned appellate Court seeking exemption from filing the certified copy of the judgment by pleading that they could not append the certified copy of the judgment as it was not yet available, and an application for obtaining the certified copy of judgment has already been applied for on 22.08.2023 vide nakal No.9393, and an uncertified copy of judgment is being attached with the appeal.

8. Order 41 Rule 1 provides as under:-

“Form of appeal- What to accompany memorandum- (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the (judgment):

(provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.”

9. It is settled that every Court has power to condone or allow rectification of procedural defects in appeals. It is always desirable that Court should decide the matters on merit in the interest of justice. In **Maharshi Dayanad University** (supra) it was held as under:-

“In so far as the first contention of Shri Dahiya is concerned, I do not find any substance in it. A plain reading of the language used in Order 41 Rule 1 of the Code of Civil Procedure makes it clear that the mandate incorporated in that provision requiring filing of a certified copy of the decree/judgment is not absolute. Ample discretion vests with the Court for dispensing with the filing of the certified copy.”

10. Considering all above facts available on record, the explanation offered by the petitioners seems reasonable. Furthermore, the petitioners were not benefitted from not placing on record the certified copy of the judgment. Moreover, petitioners had already submitted a downloaded copy of the judgment at the time of filing the appeal. In these circumstances, this Court is of the considered view that mere delay in enclosing a certified copy of the order/judgment appealed against alongwith memorandum of appeal should not have come in the way of the petitioners' appeal for being considered on merits by the learned Appellate Court. The interest of justice should not be constrained by a hyper-technical interpretation of the requirement that a certified copy of the appealed judgment was not filed within the extended time. Learned Appellate Court should have been more lenient in granting additional time to the appellants in filing the certified copy of the appeal, rather than passing an order dismissing the appeal on technical ground, affecting the statutory rights of the petitioners.

11. In view of above, order dated 04.10.2023 (Annexure P-4) is set aside. The learned Appellate Court is directed to restore the appeal at its

original number after the petitioners submit the certified copy of the judgment within 15 days from the passing of this order and thereafter proceed with the appeal in accordance with law. Accordingly, Revision Petition is allowed.

12. Pending applications, if any, also stand disposed of accordingly.

(RITU TAGORE)
JUDGE

12.02.2024
Rimpal

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