

2024:PHHC:083782



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

*CM-4278-C-2023 in/and
RSA-1127-2023(O&M)
Decided on:-04.07.2024*

Darshan Singh and anotherAppellants..
vs.

Gurdev Singh and othersRespondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Rahul Bansal, Advocate for the appellant(s).

Mr. Saurabh Kapoor, Advocate for the respondents.

HARKESH MANUJA J. (Oral)

CM-6558-C-2024

Application is allowed as prayed for. Reply to applications for condonation of delay in re-filing, filing and additional affidavit is taken on record, subject to all just exceptions.

CM-4277-C-2023

Prayer in this application is for condonation of delay of 262 days in re-filing the appeal.

Having heard learned counsel for the parties and gone through the contents of the application as well as reply to the same, sufficient cause is made out for condoning the delay.

Accordingly, application is allowed and delay of 262 days in re-filing the appeal is condoned.

CM-2130-C-2024

Application is allowed as prayed for. Additional affidavit in support of CM No.4278-C-2023 (re:condonation of delay in filing) along with Annexures A-1 is taken on record, subject to all just exceptions.

CM-6557-C-2024

Prayer in this application is for bringing on record the legal representatives of respondents No.1, 4 and 5.

Notice of the application.

Mr.Saurabh Kapoor, Advocate accepts notice of the application and raises no objection to the application.

Having heard learned counsel for the parties and gone through the contents of the application, same is allowed and persons mentioned in para 3 of the application are ordered to be impleaded as legal representatives of respondent No.1, 4 and 5.

Amended memo of parties is taken on record.

CM-4278-C-2023

By way of present application, prayer has been made for condonation of delay of 1318 days in filing the appeal.

2. In the present case, applicants-appellants (plaintiffs) filed a suit for declaration and permanent injunction claiming themselves to be owner in possession of suit property besides challenging judgment and decree dated 21.09.2002 passed in Civil Suit No.212 of 29.08.2002, titled as “**Gurdev Singh vs. Balpreet Singh**”. The said suit came to be dismissed by the Court of learned Civil Judge (Junior Division) Khanna, vide its judgment and decree dated 21.01.2012. On a challenge thereto before first appellate Court, the appeal was dismissed by the Court of Additional District Judge,

Ludhiana vide its judgment and decree dated 02.02.2016.

3. Giving a long pause to the litigation for a period of almost 04 years, applicants-appellants (plaintiffs) filed the present appeal along with this application invoking Section 5 of the Limitation Act for seeking condonation of delay of 1318 days by expressing the following cause therein:-

“That since the appeal filed by the appellants/applicants was partly decreed by the ld. First Appellate Court and the defendants have been restrained from interfering in the possession of the appellants/applicants except in due course of law, after the decision of appeal the parties were on negotiable table and the talks regarding the compromise were going on. The respondents assured the appellants/ applicants and also assurance was given by the respectable persons, who were intervening, that a compromise would be arrived at and there is no need for the appellants/applicants to file the present appeal.

That it was acting under this assurance that the appellants/ applicants did not file the present appeal for a long period. Hence, at the time of filing of the present appeal, the same was barred by 1318 days.

That the delay of 1318 days in filing the appeal is neither intentional nor willful rather the same has occurred due to the reasons as explained above. The appellants/applicants have not gained any advantage from the delay in filing the present appeal.”

Later, an additional affidavit dated 26.02.2024, in support of the delay application came to be filed at the instance of applicant No.1-appellant with the following relevant averments made therein:-

8. *That appeal for challenging the Judgment and pending*

before Ld. Additional Distt. Judge Court, Ludhiana was got decree dated 21.01.2012 dismissed vide its Judgment dated 02.02.2016 but the same never challenge within period of limitation due to the fact that compromise negotiation were going on between the parties.

9. *That present appellants were not aware about the mala fide intention of present respondents. On the one side compromise talks were going on the other side present respondent no. 1 & 2 filed a suit for possession in august, 2016 against present appellants qua the present land in dispute which is also barred under order 2 rule 2. Because earlier they were claiming in civil suit no. 212 d/o 21.09.2002 that they are in possession of present suit land.*

10. *That faced with the changing situation of respondents running from their promise/ compromise, appellant no.1 moved a complaint dated 07.03.2018 against present respondents for the registration of FIR stating that they have forged the kurcinama/ pedigree table of Late Sh. Sardara Singh and further shown them as LRs of said Sardara Singh whereas they are grandson of Sadda Ram. The respondents again approached the present appellants in regard to settlement in present case. The inquiry upon the said complaint was also remain pending with police officials more than 1 years for the reason that compromise talks were initiated between the parties. In fact, subsequent suit for possession filed by respondent no. 1 & 2 was remain pending till 2019 due to negotiation talks between the parties.*

11. *That ultimately the promise made by present respondents was never fulfilled and accordingly compromise could not be affected and they have backed from out from their promise in year 2019. The appellants also continued with their police complaint and after conducting due inquiry it was found that the Kurcinama / pedigree (EX-D-8) table prepared and also forged by present respondents, accordingly FIR no. 39 dated 17.05.2019 u/s 420, 467, 468, 471, 120-B was also got registered at*

PS- Malood, Distt- Khanna against present respondents which is still pending now for prosecution evidence. The respondents have also got arrested in said FIR and got released after applying and got their regular bails from the Courts. Copy of the FIR as well as Bail order are attached as Annexure A-1 ”.

4. Notice of this application was issued to the respondents vide order dated 29.02.2024.

5. In response, reply to the delay application as well as additional affidavit has been filed on behalf of non-applicants-respondents. Relevant extract from the reply filed at the instance of non-applicants-respondents is extracted herein:-

“6. *That the after the judgment and decree passed by first Appellate Court, answering respondents no. 1 and 2 filed a civil suit bearing no. CS/237/2016 for the possession of the suit property and same was decreed by Ld. Trial Court on 01.09.2022. The applicants filed the present appeal after the said judgment and decree with a false and fabricated story of negotiation. The photocopy of the judgment and decree dated 01.09.2022 is attached as Annexure R-1.*

7. *That as such no compromise talks were ever initiated between the applicants and answering respondents as alleged. The applicants with their political clout in order to pressurize the answering respondents are in process to register one or another false FIR against the answering respondents and others. It is pertinent to mention here that the answering respondents and others have been acquitted by Ld. Trial Court in false FIR no. 251 dated 12.04.2006 and trial of another false FIR no. 39 dated 17.05.2019 is pending before the trial court. The answering respondents are very much confident of that the Ld. Trial court will acquit them after appreciation of the entire false story and evidence. The registration FIR no. 39 dated 17.05.2019*

is nothing but pressurizing tactics used by the applicants to threat answering respondents to give up their ancestral property inherited through Mathura Dass alias Prem Singh.

8. *That the new story of fabrication of Ex. D-8 has been taken up by the applicants and as such no such point was ever raised by the applicants either before Trial Court or first Appellate Court.*

9. *The appeal has been filed with a total delay of 1580 days i.e. 4 years and 120 days without any reasonable explanation but on the basis of false story of compromise talk between the parties, which is nothing but self-contradictory in view of FIR no. 39 dated 17.05.2019 got registered by the applicants and judgment and decree dated 01.09.2022.”*

6. Pressing the application seeking condonation of delay, learned Senior counsel representing the applicants-appellants (plaintiffs) submits that the present case arises out of a clear cut fraud played upon the applicants-appellants (plaintiffs), at the hands of respondents while obtaining consent decree dated 21.09.2002 in their favour, which vitiates all subsequent proceedings. He further submits that initially talks of compromise were going on between the parties and for the said reasons, the applicants-appellants(plaintiffs) did not pursue their remedy of filing the present appeal in a *bona-fide* manner. He also points out that besides it, 02 cases bearing FIR No.251 dated 12.04.2016 and FIR No.39 dated 17.05.2019, lodged at the instance of applicants-appellants (plaintiffs) were also pending investigation/trial. Learned Senior counsel further submits that on account of assurance been extended at the hands of respondents towards settlement of the dispute, appeal could not be filed within the statutory period of limitation. No other argument has been addressed.

7. In response, learned counsel appearing on behalf of respondents

submits that the plea taken by the applicants-appellants (plaintiffs) regarding compromise talks going on between the parties is a made-up story as no such talks were going between the parties. He further submits that to the contrary even a Civil Suit No.237 dated 17.08.2016 came to be filed at the instance of respondents against the applicants-appellants seeking possession of the property in question based on declaration granted in their favour and the same was decreed by learned trial Court on 01.09.2022 and thus, prays for dismissal of the application.

8. I have heard learned counsel for the parties and gone through the contents of the pleadings as regards the application for condonation of delay. From the contents of the reply as well as the additional affidavit dated 26.02.2024, filed in support thereof, in the humble opinion of this Court, there is no substance in the submissions made on behalf of the applicants-appellants (plaintiffs) as neither the averments made in the application for condonation of delay nor in the additional affidavit dated 26.02.2024 filed at the instance of applicant No.1 in support thereof, make out sufficient cause for explaining the delay of 1318 days in filing the present appeal.

9. In the given facts, the learned Additional District Judge, Ludhiana adjudicated upon the first appeal filed at the instance of applicants-appellants (plaintiffs), vide judgment and decree dated 02.02.2016, while upholding the dismissal of suit qua relief of declaration as claimed by them and restraining the respondents herein from not to dispossess them except in due course of law.

Faced with this, the respondents filed fresh Civil Suit No.237 dated 17.08.2016, seeking possession of the property in question wherein the applicants-appellants put in appearance before the trial court on 19.10.2016.

Issue in the said suit for possession were framed vide order dated 02.01.2018 and the first witness on behalf of respondents-plaintiffs therein was examined before the Trial Court on 09.05.2018 in support of the suit. Thereafter, even the applicants-appellants herein examined their first witness in the said suit on 01.05.2019. In such situation, once the same parties were in continuous litigation through out this period, in the shape of suit for possession filed at the instance of respondents as regards the property in question, the same on the face of it goes against the cause set-up in the application seeking condonation of delay to be the talks of compromise being going on between the parties. Moreover, neither in the application nor in the additional affidavit dated 24.06.2024, any details/particulars have been mentioned as regards any meeting ever held between the parties for the purpose of entering into any settlement. Besides it, learned counsel for the applicants-appellants has not been able to point out even a single order/proceeding in the suit for possession filed at the instance of respondents, wherein, it was noticed by the Trial Court that there was any possibility of settlement or any talks between the parties were going on.

10. In such circumstances, this Court is constrained to draw an un-rebutted strong inference against the applicants-appellants that having lost their appeal vide judgment and decree dated 02.02.2016 passed by the First Appellate, they being satisfied with the grant of decree of permanent injunction in their favour went on to contest the suit for possession filed at the instance of respondents without assailing the judgment and decree passed by the First Appellate Court for a long period of almost 04 years and the plea of settlement talks being going on between the parties was pleaded in their application, being an after thought.

11. As such, in the aforementioned facts and circumstances, finding the cause expressed in the application for seeking condonation of delay of 1318 days in filing the Regular Second Appeal to be not sufficient, the application is thus, dismissed being devoid of merits.

RSA-1127-2023

As consequence of the aforesaid, the main appeal is also stands dismissed.

Pending application, if any, also stands disposed of.

04.07.2024

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(HARKESH MANUJA)
JUDGE

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