



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

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CM-8735-C-2019
CM-8737-C-2019 in/and
RSA-3253-2019 (O&M)
Date of Decision: 06.03.2025

Surjit Singh

.... Appellant

Versus

Maghar Singh and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. M.K.Singla, Advocate with
Mr. Dinesh Kumar, Advocate for the appellant.

NIDHI GUPTA, J. (ORAL)

CM-8735-C-2019 and CM-8737-C-2019

Prayer in the application (CM-8735-C-2019) filed under Section 5 of the Limitation Act is for condonation of delay of 552 days in filing the accompanying appeal; and prayer in the application (CM-8737-C-2019) filed under Section 151 CPC is for condonation of delay of 538 days in re-filing the accompanying appeal.

2. A perusal of the said applications reveals that only vague and general reasons have been given by the applicant-appellant for seeking condonation of 552 and 538 days in filing and re-filing the accompanying appeal. The same do not constitute sufficient cause for condoning of the extraordinary and inordinate delay of 552 and 538 days in filing and re-filing of the accompanying appeal.



3. It is well-settled proposition of law that each day's delay has to be explained in a mathematical manner which has not been done by the applicant-appellants. No cogent reason or plausible explanation has been furnished by the applicant-appellant for condonation of such an inordinate and unexplained delay in filing and refiling of the main appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification.

4. The Law of Limitation is enacted with a purpose, as a hand-maid of Justice and cannot be ignored/reduce to an ineffective piece of paper by giving it the complete go-by. It is the bounden duty of every litigant to pursue his case diligently; and it is also the bounden duty this Court to ensure that justice inures to both parties concerned. With passage of time, rights of the parties get crystallised. It is necessary to notice that in the present case, the Civil suit is dated 16.7.2007; which was decreed by the learned Trial Court vide judgment and decree dated 24.9.2014; and the appeal filed by the defendant was dismissed by the learned District Judge vide judgment and decree dated 25.1.2016; and the present second appeal is of the year 2019; and notice has not yet been issued in the same as the matter has been repeatedly adjourned for 6 years either at the request of or due to non-appearance of the learned counsel for the appellant on 08.07.2019, 29.08.2019, 28.11.2019, 18.02.2020, 05.07.2022, 02.09.2022, 13.09.2022, 21.10.2022, 16.11.2022, 07.02.2023, 12.05.2023, 11.09.2023, 12.10.2023, 18.10.2023, 15.01.2024, 09.07.2024 and 03.10.2024. It is the beholden obligation of not just this Court but also the learned counsel to pursue the



matter diligently being of such old vintage. However, the above facts evidence that the matter has been pursued with utmost casualness. It is also to be appreciated that very valuable public time of the Court is expended in affording multiple opportunities in the interest of justice. However, the same cannot be misused to endlessly drag the matter to the unfair advantage or disadvantage of either party.

5. More so, the Hon'ble Supreme Court in ***Pathapati Subba Reddy (Died) by LRs and others vs. The Special Deputy Collector (LA)***, ***Law Finder Doc Id # 2542600***, has recently held as under:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*



- (vi) *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the Court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) *Merits of the case are not required to be considered in condoning the delay; and*
- (viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.” (Emphasis added)*

6. The above Applications, accordingly, stand **dismissed**.

RSA-3253-2019 (O&M)

Even on merit, no ground is made out to interfere in the impugned judgment and decree of the learned Court below. The brief facts of the case are that the appellant/defendant No.1 and respondents/plaintiffs are brothers and sisters. The respondent/plaintiff (Maghar Singh) had filed Civil suit No.122RT-16/07/2007 ‘*Maghar Singh vs. Surjit Singh and others*’, suit for declaration, suit for mandatory injunction and suit for permanent injunction. The respondent/plaintiff (Maghar Singh) sought relief of declaration to the effect that he is joint owner and is in joint possession over the suit property to the extent of half share alongwith appellant/defendant No.1; and has further claimed mandatory injunction directing the appellant/defendant No.1 to pay Rs.60,000/- as chakota from 2004 to 2007. The respondent/plaintiff has based his claim on family settlement pertaining to the year 1997. The respondent/plaintiff claimed that his father Gurdial Singh was owner in possession of suit property. Gurdial Singh died on 20.05.2007. Gurdial Singh gave half share to respondent/plaintiff and half share to appellant/defendant No.1.



2. A cross Civil Suit No. 85 dated 02.03.2009 titled '*Surjit Singh vs. Maghar Singh and others*', for declaration and suit for permanent injunction was filed by appellant/defendant No.1 against the respondent/plaintiff claiming ownership-in-possession over the suit property on the basis of Will dated 10.08.2005. Respondent/plaintiff (Maghar Singh) denied Will dated 10.08.2005.

3. Vide order dated 19.12.2013, the learned Trial Court consolidated both the above said suits with the consent of the parties through their counsel. Vide common judgment and decree dated 24.09.2014, the learned Trial Court decreed the suit of the appellant/defendant No.1 Surjit Singh i.e. CS No. 85/2009; while dismissing the Civil suit No.122RT-16/07/2007 titled as '*Maghar Singh vs. Surjit Singh*'.

4. The respondent/plaintiff filed two appeals against the said judgment and decree dated 24.9.2014 of the learned Trial Court, the same being:

i) Civil Appeal No. 47 of 06.04.2015 '*Maghar Singh vs. Surjit Singh and others*' against the judgment and decree dated 24.09.2014 of Civil Suit No. 85 of 02.03.2009; which has been allowed vide judgment and decree dated 25.1.2016; and

(ii) Civil appeal No. 48 of 06.04.2015 '*Maghar Singh vs. Surjit and others*' against judgment and decree dated 24.09.2014 of Civil Suit No. 209 of 02.03.2009 and RBT No. 122 of 30.05.2014 which has been partly allowed vide judgment and decree dated 25.1.2016.



5. Hence, present second appeal has been filed by the defendant in Civil Appeal No. 48 dated 06.04.2015.

6. The learned counsel for the appellant has made no submissions and rendered absolutely no assistance to the Court in assailing the impugned judgment and decree of the learned Appellate Court.

7. It may also be pointed out that vide order dated 12.10.2023, a Coordinate Bench of this Court had directed learned counsel for the appellant to inform whether the appellant had filed any second appeal against the dismissal of his suit by the Appellate Court. Even no information is forthcoming in this respect by learned counsel for the appellant.

8. Further, a perusal of the record of the case shows that the learned Trial Court decreed the suit of the appellant on the basis of the admission made by the other legal heirs i.e. the daughters of Gurdial Singh/defendants/respondents No. 2 and 3; and Maghar Singh that Maghar Singh was residing separately from his father. Ld. Trial Court accordingly held that this was the reason why the testator is giving his property to appellant/defendant No.1/Surjit Singh and denying the other heirs any right in the property. Ld. Trial Court further opined that respondent/plaintiff by examining handwriting expert and leaving thumb impression from appraisal, has impliedly admitted the thumb impression of the testator on the document. Ld. Trial Court also took into account the admission made by Maghar Singh that appellant/defendant No.1 had paid outstanding debt of Rs.15 lacs of the deceased Gurdial Singh which further corroborated that appellant/defendant No.1/Surjit Singh was ready and willing to discharge



liabilities of deceased father Gurdial Singh, as his pious duty/liability. Respondent/plaintiff (Maghar Singh) further himself admitted that appellant/defendant No.1 Surjit Singh is in possession over the suit property.

9. The Trial Court accordingly, upheld the Will; and as such, suit of appellant i.e. CS No. 85 dated 02.03.2009 was decreed.

10. However, I find that in doing so the learned Trial Court has ignored other vital evidence on record. The learned Trial Court lost sight of the fact that the Will in question was an unregistered document. Moreover, the appellant never produced the original Will on record at the time of filing the suit; but filed a copy of same thereafter vide an application dated 31.01.2011 for proving the unregistered Will dated 10.08.2015. The learned Trial Court also ignored that as per the opinion of Dr. Inderjit Singh/ DW1, the Will was in deteriorating condition. All the contents of the said Will were not clearly visible; and the thumb impression Q1 was not affixed in usual manner. Even further, the Will was prepared by writing the matter above pre-existing thumb impression on the blank paper. A further perusal of Ex.D1 (Will) goes to reveal that the same had not been affected by water but had been treated in such a manner to misguide the originality of same.

11. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings of the learned Lower Appellate Court.

12. The present regular second appeal is accordingly, hereby **dismissed** on merits, as well as on grounds of delay.

13. Pending applications, if any, stand disposed of.

06.03.2025

Divyanshi

(NIDHI GUPTA)

JUDGE

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