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(1986) 05 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 515 of 1986

Avtar Singh	APPELLANT
Vs	
Bakshi Ram Chela Mahant Kundan Dass Chela Kulshetar Dass	RESPONDENT

Date of Decision: May 29, 1986

Acts Referred:

- Limitation Act, 1963 - Section 5

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: V.K. Kataria, for the Appellant; Arun Jain, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

This petition is directed against the order of the District Judge, Faridkot dated 13.11.1985. Whereby the appeal filed by Avtar Singh Petitioner was dismissed as barred by time.

2. The trial Court dismissed the Plaintiff''s suit vide its judgment dated 15.12.1984. An urgent application for obtaining certified copies of the judgment and decree sheet, was filed on that very day. The copies were delivered on 12.2.185(sic). The date of preparation given therein is 31.1.1985. The appeal was filed on 12.3.1983. with an application u/s 5 of the Limitation Act for condoning the delay. It was stated therein that on 12 2.1985 the Plaintiff Avtar Singh had fallen ill and remained under the treatment of Dr. Baljit Singh Grover till 7.3.1985 and from 7.3.1985 to 10.3.1985 the Courts remained closed. Thus be filed the appeal on 12.3.1985. This application was contested on behalf of Defendant-Respondent. The learned District Judge farmed the necessary issue and allowed the parties to lead evidence. Ultimately, he came to the conclusion that there was no sufficient ground for condoning the delay.

The Petitioner was required to explain delay for each day and there was no explanation as to why the appeal was not filed on 11.3.1985. Dissatisfied with the same, the Plaintiff has filed this petition in this Court.

3. After going through the evidence on the record, I am of the considered view that it was a fit case where the delay should have been condoned on payment of costs. In this case Surinder Kumar examiner Copying Agency attached to the Court of Senior Sub Judge, Faridkot, appeared as R.W. 1. He admitted that an urgent application was filed for the Supply of copies. He also stated that in case of urgent applications, the copies are issued within seven days. Admittedly, the application was filed on 15.12.1984 and the copies were not prepared within seven days. The date of preparation given is 31.1.1985. Thus, in these circumstances, unless there was an intimation to the applicant for collecting the copies prepared by the Copying Agency, he could not be held liable when it was delivered to him on 12.2.1985. The said witness has not stated any where that any such intimation was given. According to him when the applicant did not come to receive those copies he brought the matter to the notice of the Senior Sub Judge who directed to deliver the copies to the counsel or clerk of the parties concerned. Thus the copies in the present case were delivered to Gurpal Singh.

4. However, since the plea taken by the Petitioner was that he had fallen ill and therefore, the appeal could not be filed earlier, was not accepted by the learned District Judge and under those circumstances, the delay should have been condoned on payment of costs. Consequently, the petition succeeds, the impugned order is set aside and the application u/s 5 of the Limitation Act for condoning the delay is allowed on payment of Rs. 300/- as costs. The parties have been directed to appear before the District Judge, Faridkot on 19th June, 1985. If the costs are paid the appeal be heard on merits in accordance with law, failing which this petition will stand dismissed. The records be sent back forthwith.