(2011) 04 P&H CK 0185

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3146 of 2010 (O and M)

Amrik Singh		APPELLANT
	Vs	
N. K. Srivastava and Others		RESPONDENT

Date of Decision: April 4, 2011

Acts Referred:

- Partnership Act, 1932 - Section 69
- Specific Relief Act, 1963 - Section 41

Citation: (2011) 04 P&H CK 0185

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 9281-C of 2010

1. This is application by Appellant-Amrik Singh for condonation of delay of 1080 days in filing the appeal. It is alleged in the application that the applicant-Appellant had been attending the case before the Courts below, but he requested the Clerk of the counsel in the lower Courts to inform him as and when the case was decided because the applicant-Appellant was suffering from heart disease and might not be able to attend the Court proceedings, but Clerk of the counsel did not inform the applicant-Appellant. After waiting for long time, the applicant-Appellant contacted his counsel in the lower Courts and learnt of the decision dated 11.06.2007 of the lower appellate Court.

2. I have heard learned Counsel for the applicant-Appellant and perused the case file.

3. Learned Counsel for the applicant-Appellant reiterated the stand taken by the applicant-Appellant in the application. However, on careful consideration thereof, I find no

ground much less sufficient ground for condoning the long delay of almost three years in filing the appeal. Vague, general and specious averments that applicant Appellant was suffering from heart disease and could not attend the Court and Clerk of the counsel did not inform him about the decision of the first appeal cannot be said to be a ground to condone long delay almost three years. If such long delay is condoned on such vague, general and specious ground, then the law of limitation would be completely defeated. The very purpose of prescribing limitation period would be frustrated. Keeping in view the averments made in the application, even if taken at face value, I find no ground much less sufficient ground for condoning the long delay of almost three years for filing the instant second appeal. It may be added that even if the applicant-Appellant was unwell, he could have contacted his counsel telephonically. His family members also could contact the counsel or could attend the Court proceedings. The applicant Appellant could not have waited for more than three years since after the decision of the first appeal to contact his counsel to know the fate of the appeal. No document regarding alleged ailment of the applicant-Appellant has either been produced.

4. For the reasons aforesaid, I find no merit in the instant application. The same is hereby dismissed.

CM No. 9282-C of 2010

5. Allowed as prayed for.

Main Appeal.

6. Since application for condonation of delay in filing the appeal has been dismissed, the appeal is liable to dismissal as time barred. However, even on merits, the Appellant cannot succeed.

7. This is second appeal by Amrik Singh-Plaintiff, having failed in both the Courts below.

8. Case of the Plaintiff-Appellant is that he along with Defendant No. 4/Respondent No. 1 constituted a partnership firm.

Defendant Nos. 1 to 3 (functionaries of National Fertilizer Limited-NFL) allocated work to the partnership firm which was executed by the firm. However, Defendant No. 4 alone wanted to take away the amount of the said work. The Plaintiff sought permanent injunction restraining the Defendant Nos. 1 to 3 from disbursing the said amount of the firm to Defendant No. 4 and from operating bank accounts of the firm and from receiving payment etc. due to the firm and from alienating the property of the firm. Alternative relief of mandatory injunction was also sought if Defendant No. 4 succeeded in getting payments from Defendant Nos. 1 to 3.

9. The suit was contested by the Defendants.

10. Learned Additional Civil Judge (Senior Division), Anandpur Sahib vide judgment and decree dated 07.09.2006 dismissed the Plaintiff''s suit. First appeal preferred by the Plaintiff has been dismissed by learned Additional District Judge, Ropar vide judgment and decree dated 11.06.2007. Feeling aggrieved, Plaintiff has filed the instant second appeal.

11. I have heard learned Counsel for the Appellant and perused the case file.

12. At the outset, it has to be noticed that suit for injunction alone is not maintainable. The Plaintiff in the garb of injunction wanted recovery of the amount allegedly due from Defendants No. 1 to 3 to the alleged firm. However, the Plaintiff did not seek relief of recovery of the said amount. Mere permanent injunction as sought for by the Plaintiff would not be sufficient because in that event, the amount would keep lying with Defendant Nos. 1 to 3 and neither Plaintiff nor Defendant No. 4 would be entitled to receive the amount. On the contrary, the suit is barred by Section 41(h) of the Specific Relief Act, 1963 because the Plaintiff had efficacious remedy to seek relief of the recovery of the due amount or to seek dissolution of the alleged partnership firm and rendition of accounts thereof and recovery of the due amount. However, the Plaintiff did not seek any such relief and sought permanent injunction only. Suit for permanent injunction alone is not maintainable in the facts and circumstances of the case even if plaint averments are taken at face value.

13. In addition to the aforesaid, the alleged partnership firm constituted by Plaintiff and Defendant No. 4 was admittedly unregistered. Consequently, the suit has been rightly held to be barred by Section 69 of the Indian Partnership Act, 1932. There is no infirmity, illegality or perversity in the aforesaid finding of the Courts below. Even if alleged partnership firm was constituted by Plaintiff and Defendant No. 4, the same being unregistered, the Plaintiff cannot file suit on the basis of such unregistered partnership in view of mandatory provision of Section 69 of the Indian Partnership Act, 1932.

14. For the reasons aforesaid, I find no merit in the instant second appeal. No question of law, much less substantial question of law, arises for adjudication in the instant second appeal.

Accordingly, the appeal is dismissed in limine.