

(1980) 01 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2396 of 1979

Hardhan Singh

APPELLANT

Vs

Mangal and others

RESPONDENT

Date of Decision: Jan. 11, 1980

Acts Referred:

- Limitation Act, 1963 - Section 5

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: Chandra Singh, for the Appellant; H.L. Sarin and Mr. R.L. Sarin, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Harbans Lal, J.

Civil Miscellaneous No. 2574-C of 1979 in R.S.A. No. 2396 of 1979, has been filed u/s 5 of the Limitation Act. (hereinafter called the Act), for condonation of delay in filing the appeal.

2. The admitted facts are that the appeal was filed on August 27, 1979, within limitation. The memorandum of appeal was accompanied by a certified copy of the judgment of the first appellate Court and uncertified copy of the judgment of the trial court. The Appellant filed application for obtaining certified copy of the judgment of the trial Court on August 29, 1979, when the limitation for filing the appeal had already expired. The certified copy was obtained on September 5, 1979. However, the same was filed in the Registry on September 13, 1979. It is averred that this certified copy had been sent by the Appellant to his counsel by registered post. Even when the certified copy was filed the same had not been affixed with requisite Court fee stamps. The objection having been raised by the office, the requisite Court-fee stamps were affixed on September 17, 1979. In view of these

circumstances, it is contended by the learned Counsel for the Appellant-applicant, that there is sufficient cause for condonation of delay u/s 5 of the Act.

3. It is contended by the learned Counsel for the Respondents, that it was imperative for the Appellant not only to annex the certified copy of the judgment of the appellate Court with the memorandum of appeal, but also the certified copy of the judgment of the trial Court. Reliance in support of this contention has been placed on *Shiv Dayal Dhimen v. Havell Rum* 1976 Rev. L. R. 590: (1976) 78 P.L.R. 16 S.N. It is also stressed that in view of the Division Bench judgment of this Court in *Karambir Singh v. Shrimati Mukhtiar Inder Kaur* (1968) 70 P.L.R. 438, the delay for the period spent in obtaining the certified copy of the judgment of the trial Court cannot be condoned because the application for the same had been filed after the period of limitation for filing the appeal had already expired. Besides, even after the copy had been obtained on September 5, 1979, the same after affixing the requisite Court fee stamps thereon was filed as late as on September 17, 1979. The delay in doing the same has not been satisfactorily explained.

4. The learned Counsel for the Appellant, has placed reliance on Rule 3A of Order XLI, Code of Civil Procedure, to canvass that the delay in filing the certified copy of the judgment of the trial Court be condoned. However, in view of the ratio of the judgment of the Division Bench in *Karambir Singh*'s case (Supra), condonation of delay is not justified. The application for obtaining the certified copy of the judgment was filed after the period of limitation for filing the appeal, and even after obtaining it, the same after affixing, the Court fee stamps was not filed with promptitude and according to the averments in the application and the affidavit filed, the delay is not satisfactorily explained. Reliance on *Shakuntla Devi Jain v. Kanta Kumar* (1968) 70 P.L.R.D. 332, by the learned Counsel for the Appellant, also appears to be misconceived. Consequently, the application is dismissed

5. The result is that the appeal is also dismissed as time barred, with no order as to costs.