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(2013) 07 P&H CK 0894

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 2380 of 2012 (O and M)

Balkar Singh (Dead Through L.Rs.)		APPELLANT
	Vs	
Beant Singh and Others		RESPONDENT

Date of Decision: July 19, 2013

Citation: (2013) 172 PLR 167

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

Bench: Single Bench

Advocate: Amandeep Singh Manise, for the Appellant; K.B. Raheja, for the Respondent

Judgement

L.N. Mittal, J.

C.M. No. 10149-CII of 2012:

1. This is application for impleading legal representatives of defendant Balkar Singh (since deceased). It is alleged in the application that Balkar Singh has left behind persons, mentioned in paragraph 3 of the application, as his only legal heirs. The application is accompanied by joint affidavit. Accordingly, the application is allowed, subject to all just exceptions and persons mentioned in paragraph 3 of the application are ordered to be impleaded as legal representatives of Balkar Singh - defendant (since deceased), for the purpose of this revision petition.

Main Case:

In this revision petition filed under Article 227 of the Constitution of India, challenge is to order dated 05.01.2011 (Annexure P-3) passed by learned lower appellate court i.e. Additional District Judge, Ferozepur.

Respondent No. 1 - plaintiff Beant Singh filed suit against defendant Balkar Singh (since deceased and represented by petitioners and proforma respondents No. 2 to 6 as his

legal representatives) for specific performance of agreement to sell. The suit was decreed by the trial court, vide judgment and decree dated 15.04.2008. Defendant filed first appeal on 24.12.2009 against judgment and decree of the trial court along with application (Annexure P-1) for condonation of delay of about 20 months in filing the first appeal. Learned tower appellate court, vide order dated 03.12.2010 (Annexure P-2), granted indulgence in favour of the defendant appellant and condoned the said delay, subject to payment of Rs. 5,000/- as costs. The case was adjourned to 23.12.2010 for payment of costs. However, cost amount was not paid on the said date. On request of counsel for defendant-appellant, lower appellate court adjourned the case to 05.01.2011 for payment of costs. However, even on 05.01.2011, cost amount was not paid and rather application for grant of further time to deposit the cost amount was filed. The said application was declined and since the cost amount was not paid, the appeal was dismissed, vide order dated 05.01.2011 (Annexure P-3), which is under challenge in this revision petition.

2. I have heard counsel for the parties and perused the case file.

3. Counsel for the petitioners contended that defendant Balkar Singh was old and ill and remained admitted in hospital for different periods, and therefore, he could not pay the cost amount and adjournment should have been granted for payment of cost amount.

4. The aforesaid contention cannot be accepted in the facts and circumstances of the instant case. Suit filed by respondent No. 1 - plaintiff for specific performance of the agreement was decreed by the trial court, vide judgment and decree dated 15.04.2008 i.e. more than five years ago, but the plaintiff has not been able to reap the fruits of the decree because of fault of the defendant (including his legal representatives). The defendant filed first appeal after delay of almost 20 months. However, learned lower appellate court, granting indulgence in favour of the defendant, condoned the said inordinately long delay in filing the first appeal, on payment of Rs. 5,000/- as costs, but in spite of two adjournments, the cost amount was not paid. Even if the defendant himself was old and ill, the petitioners and proforma respondents No. 2 to 6, who are his legal heirs, should have pursued the case and paid the cost amount. Petitioners are two sons of the deceased defendant. He also had another son, who had since died leaving behind a grandson for the defendant. Petitioners and proforma respondents No. 2 to 6 could have assisted the defendant in pursuing the case by paying the cost amount. Consequently, impugned order of the lower appellate court does not suffer from any perversity, illegality or jurisdictional error. In addition to the aforesaid, even the instant revision petition was not filed promptly. It was filed on 19.04.2012 i.e. more than 01 year 03 months after the passing of the impugned order. It is correct that there may not be specific limitation period for filing revision petition under Article 227 of the Constitution of India. Nevertheless, the revision petition has to be filed within reasonable period. For filing revision petition u/s 115 of the Code of Civil Procedure, the limitation period is 90 days. The same may be taken to be reasonable period for filing revision petition under Article 227 of the Constitution of India with some variation in facts and circumstances of a particular case. In the instant case, however, the revision petition was filed more than 01

year 03 months after the passing of the impugned order, for which there is no justification. Consequently, the instant revision petition is also liable to dismissal on the ground of delay and laches. It becomes manifest that the only interest of the defendant and the petitioners is to delay the execution of the decree, which has been passed by the trial court in favour of respondent No. 1 - plaintiff.

Resultantly, I find no merit in this revision petition, which is accordingly dismissed.