

(2013) 09 P&H CK 0464

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 2140 of 2012 (O and M)

Harnek Singh

APPELLANT

Vs

The District Development and
Panchayat Officer, Bathinda and
Others

RESPONDENT

Date of Decision: Sept. 17, 2013

Acts Referred:

- Constitution of India, 1950 - Article 227
- Limitation Act, 1963 - Section 5

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

Bench: Single Bench

Advocate: Binderjit Singh, for the Appellant; Puneet Kaur Sekhon, Additional Advocate General, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 16597-CII of 2012

Allowed as prayed for.

CM No. 16598-CII of 2012

The application is allowed and Annexures P-7 and P-8 are taken on record, subject to all just exceptions.

Main Case

1. Plaintiff-Harnek Singh has filed this revision petition under Article 227 of the Constitution of India impugning order dated 05.03.2012 Annexure P-6 passed by learned lower Appellate Court thereby allowing application Annexure P-2 filed by defendants/respondents (State of Punjab and its authorities) u/s 5 of the Limitation

Act for condonation of delay in filing first appeal by the defendants against ex parte judgment and decree dated 03.05.2004 Annexures P-7 and P-8 passed by the trial Court thereby decreeing the suit filed by plaintiff-petitioner against defendants/respondents. The defendants alleged in their application Annexure P-2 that appeal could not be filed in limitation because in spite of many letters written by defendant no. 3 to the Director of Prosecution, permission to contest the suit was not received and even till filing of the first appeal, no such permission had been received and the appeal was being filed by engaging a private counsel, resulting in delay in filing the first appeal.

2. Plaintiff by filing reply Annexure P-3 opposed the application and controverted the averments made therein.

3. Learned lower Appellate Court vide impugned order Annexure P-6 has allowed application Annexure P-2 filed by the defendants (appellants before the lower Appellate Court) and has condoned the delay in filing the first appeal, subject to payment of Rs. 7,000/- as costs. Feeling aggrieved, plaintiff has filed this revision petition to assail the said order.

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

5. Counsel for the petitioner contended that there was delay of almost seven years three months in filing the first appeal and the said delay was not explained and, therefore, the said long delay could not be condoned. It was also pointed out that defendant no. 3 had even filed reply dated 07.04.2005 Annexure P-1 in execution proceedings but still the appeal was filed more than six years four months thereafter.

6. Learned State counsel for respondent, on the other hand, contended that Panchayat land could not be auctioned and sold to the plaintiff, without sanction of competent authority and the decree has been obtained by the plaintiff from the trial Court by fraud and, therefore, delay in filing the first appeal has been rightly condoned by the lower Appellate Court.

7. I have carefully considered the rival contentions. No ground, much less sufficient ground was pleaded by the defendants in their application Annexure P-2 for condoning the long and inordinate delay of more than seven years in filing the first appeal. The ground pleaded is that competent authority did not grant sanction to the defendants to contest the suit. However, there is not even a plea in application Annexure P-2 that after the suit was decreed ex parte vide judgment and decree dated 03.05.2004, any permission was sought by defendants for filing first appeal. The letters were allegedly written by defendant no. 3 to Director of Prosecution for permission to contest the suit and not for permission to file the first appeal. There is no averment in the application Annexure P-2 as to why no step whatsoever was taken for more than seven years for preferring the first appeal after passing of ex parte judgment and decree by the trial Court. Consequently, even adopting very

liberal approach, the long and inordinate delay of more than seven years in filing the first appeal could not be condoned. If such long and inordinate delay is condoned without there being any ground, much less sufficient ground, then the law of limitation would be rendered completely redundant and nugatory. Courts cannot be permitted to do so.

8. It is also significant to notice that defendant no. 3 had filed reply dated 07.04.2005 Annexure P-1 in the execution proceedings. However, in spite thereof, the first appeal was not preferred immediately thereafter by the defendants and was rather preferred more than six years and four months after filing of reply Annexure P-1 in the execution petition. At the risk of repetition, it has to be highlighted that there is no explanation whatsoever for this monumental delay on the part of the defendants.

9. The contention raised by learned counsel for respondents that decree has been obtained by plaintiff by fraud from the trial Court is completely untenable. No such ground was taken in application Annexure P-2. Even in grounds of first appeal (as shown by counsel for respondents), no such ground has been pleaded. Even otherwise, the question of fraud in obtaining decree from the trial Court would not arise when the respondents have themselves pleaded in application Annexure P-2 that they could not contest the suit because in spite of letters written by defendant no. 3 to Director of Prosecution, no sanction or permission to contest the suit was granted by the Government/higher authorities. Consequently, defendants themselves are to be blamed for the passing of ex parte judgment and decree by the trial Court and the blame cannot be laid on the doors of the plaintiff or the trial Court for the passing of the same.

10. The contention of counsel for respondents that Panchayat could not sell the land to the plaintiff without sanction of competent authority, is irrelevant for the disposal of the instant revision petition. The said ground could be raised by the defendants in the suit and no such ground can be raised to seek condonation of delay in filing the first appeal.

11. For the reasons aforesaid, I find that long and inordinate delay of more than seven years in filing the first appeal could not be condoned because there was no ground, much less sufficient ground, for condoning the same. Impugned order passed by the lower Appellate Court condoning the said delay is patently perverse and illegal and suffers from jurisdictional error. As a necessary consequence, the instant revision petition is allowed. Impugned order Annexure P-6 passed by the lower Appellate Court is set aside. Application Annexure P-2 filed by defendants/respondents (appellants in the lower Appellate Court) for condoning delay in filing the first appeal stands dismissed and consequently the first appeal preferred by defendants/respondents stands dismissed as time barred. A copy of this order be sent to Principal Secretary, Development and Panchayats, Punjab for holding enquiry in the whole matter and for taking appropriate action against the

guilty and also for taking remedial steps to avoid loss of public property in such fashion.