

(2016) 10 P&H CK 0133

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 7054 of 2016

Kamini Devi

APPELLANT

Vs

Anand Dutch Foods (India)
Limited

RESPONDENT

Date of Decision: Oct. 25, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 2
- Limitation Act, 1963 - Article 53, Section 5, Section 5
- Transfer of Property Act, 1882 - Section 53

Citation: (2017) 1 ICC 319 : (2016) 4 LawHerald 3569

Hon'ble Judges: Mrs Rekha Mittal, J.

Bench: Single Bench

Advocate: Mr. V.K. Jindal, Senior Advocate with Mr. Akshay Jindal, Advocates, for the Petitioner

Final Decision: Dismissed

Judgement

Rekha Mittal, J. - The present petition lays challenge to order dated 07.10.2016 (Annexure P1) passed by the Additional District Judge, Mewat whereby application filed under Section 5 of the Limitation Act for condoning delay of more than 2 years in filing the appeal has been dismissed.

2. Counsel for the petitioners has submitted that Anand Dutch Foods (India) Limited filed a suit for specific performance of agreement of sale dated 01.06.1992 purported to be executed by Ram Lal in respect of agricultural land measuring 103 kanals 13 marlas situated within the revenue estate of village Sakarpuri, Tehsil Ferozepur Jhirka, District Mewat. In the said suit, Daya Chand, Amar Chand and Dolta sons of Ram Lal, Smt. Patango daughter of Ram Lal, Surender Sharma son of Khurshi Ram, Vijay Pal, Sunder Singh, Dharam Veer sons of Attar Singh were arrayed as defendants. The suit was decreed by the learned trial Court vide judgment and

decree dated 28.09.2013. It is argued that Vijay Pal, Sunder Singh and Dharam Veer (defendants No.6 to 8) purchased suit land from Daya Chand, etc. (defendants No.1 to 4) vide sale deed bearing No.60 dated 09.04.2007 before filing of the suit, though, the sale deed was registered on 17.04.2007 after the suit was instituted on 12.04.2007. The petitioners purchased suit land from Vijay Pal and others (defendants No.6 to 8) vide sale deeds No.686 dated 06.09.2010 and 791 dated 02.09.2013. The judgment and decree passed by the trial Court was not challenged by any of the defendants who had already lost their interest in the suit land due to transfer of land by Daya Chand and others in favour of Vijay Pal and others and further transfer by Vijay Pal and others in favour of the petitioners. As soon as the petitioners came to know about the judgment and decree dated 28.09.2013 in April, 2016 (to be precise on 12.04.2016), the petitioners filed civil appeal No.638 of 2016 on 12.05.2016 along with an application seeking leave to appeal. The application for leave to appeal was allowed by the Appellate Court vide order dated 12.05.2016 wherein the Court held that there are arguable points in the appeal and notice of appeal as well as injunction application and application for condonation of delay was issued to the respondents. It is further argued that once the Appellate Court has allowed leave to appeal by holding that there are arguable points, the Court should not have dismissed the application for condonation of delay and rather provided an opportunity to the petitioners to be heard on merits of the appeal. It is further argued that as the petitioners neither came to know about pendency of the suit nor passing of the judgment and decree at any time prior to 12.04.2016, the appeal filed within a period of one month from the date of knowledge cannot be said to be barred by limitation.

3. Counsel for the petitioners adopted another line of argument by contending that the Court of appeal failed to take into consideration the provisions of Section 19(b) of the Specific Relief Act, 1963 (in short "the Act") that provides that specific performance of a contract may be enforced against any other person claiming under him by title arising subsequently to the contract except a transferee for value who has paid money in good faith and without notice of the original contract. It is vehemently argued that the present petitioners are also entitled to protection of Section 19(b) of the Act being transferees for value in good faith and without notice of the original contract of 1992 which was sought to be enforced in the year 2007. In support of his contention, he has referred to judgment of Hon"ble the Supreme Court of India "**Har Narain (Dead) by LRs v. Mam Chand (Dead) by LRs and others**", 2010 (4) RCR (Civil) 853.

4. I have heard counsel for the petitioners, perused the paper book and the various annexures particularly the order impugned.

5. A careful reading of the application for condonation of delay makes it evident that the sole plea raised by the petitioners is that as the petitioners for the first time came to know of the impugned judgment and decree dated 28.09.1993 on

12.04.2016 when respondent No.2 therein tried to take possession of suit land at the back of the appellants/applicants, they have filed the appeal from date of knowledge without any delay, therefore, delay is liable to be condoned. The Court below, on a detailed consideration of the rival submissions made by counsel for the parties as well as series of judgments cited in support of their respective contentions, referred to in paras 5 and 6 of the impugned order, negated plea of the petitioners by relying upon judgments of this Court "**Inderjeet Wadhwa v. Jagjit and another**", 2005(2) RCR (Civil) 316, "**Rana Mahajan and another v. Shri Purshottam Krishan and others**", 2014(2) RCR (Civil) 331, judgments of Hon'ble the Supreme Court of India "**Usha Sinha v. Dina Ram and others**", 2008(3) RCR (Civil) 145, "**Basawaraj and another v. Special Land Acquisition Officer**", 2014(1) RCR (Civil) 603 and "**Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another**", 2010(2) RCR (Civil) 284 and came to hold that no sufficient cause has been shown by the applicants for such a long delay of more than 2 years in filing the appeal, therefore, no ground is made out to allow the application for condonation of delay and accordingly the same is dismissed.

6. Counsel for the petitioners has not made any submissions that the Court below has wrongly relied upon the aforesaid judgments nor cited any contrary law. The judgment in Inderjeet Wadhwa's case (supra) is tailor-made for the case in hand. In the said case, subsequent vendee purchased the property during pendency of litigation and he was held dis-entitled to claim condonation of delay for want of knowledge of the decree. In the said case, Inderjeet Wadhwa filed appeal against the judgment and decree dated 12.05.2003. Along with the appeal, he filed two applications, one for permission to file the appeal while the other for seeking condonation of delay in filing the appeal. In the application seeking condonation of delay, it was alleged that parties to the suit had colluded with each other which resulted in passing of the ex parte judgment and decree in favour of the plaintiff for possession of a part of house No.249 L, Model Town, Sonapat which has been purchased by the applicant from Bharat Singh - defendant and one Jagbir Singh. It was further alleged that the applicant came to know about the judgment and decree about a week back when one Rajinder Kumar informed the applicant about passing of the said judgment and decree by the trial Court. This Court after taking into consideration the various judgments rendered by this Court as well as other High Courts held in para 15, quoted thus:-

"On the facts and circumstances of the present case, in my opinion, the learned Additional District Judge was perfectly justified in dismissing the application of the present appellant seeking condonation of delay in filing the appeal, inasmuch as the applicant-appellant had failed to make out sufficient cause for condoning the delay of more than six months in filing the appeal (limitation for filing the appeal is only 30 days). On the facts and circumstances of the present case, in my opinion, it could not be said that the limitation for filing the appeal would start from the date of knowledge, since Inderjit Wadhwa appellant would be deemed to have the

knowledge since he had purchased the property of the litigation and had stepped into the shoes of the defendant and did not have an independent right, as held in the various authorities, referred to above."

7. As in the present case, the petitioners purchased the property in dispute during pendency of the suit, they would be deemed to have knowledge of the litigation, therefore, no fault can be found in the impugned order whereby the learned Additional District Judge has rightly dismissed the application seeking condonation of delay of more than 2 years. In Usha Sinha's case (supra) though the question before Hon"ble the Supreme Court was as to whether a purchaser during pendency of litigation has a right to resist or obstruct execution of the decree, the Court held that a transferee from a judgment-debtor is presumed to be aware of the proceedings before a Court of law as *lis pendens* itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Keeping in view the dictum in Inderjeet Wadhwa's case (supra), no error much less illegality can be noticed in the impugned order whereby plea of the petitioners that there is sufficient cause for condoning delay of more than 2 years on the premise that they have filed the appeal within a period of one month from the date of knowledge of the judgment and decree has been rejected.

8. This brings the Court to plea of the petitioners qua protection under Section 19(b) of the Act of 1963. Firstly, no such plea was raised in the application for condonation of delay. Secondly, any such plea of protection under Section 19(b) could be pressed into service only if the appeal was to be heard on merits after condoning delay of more than 2 years. In this view of the matter, the petitioners cannot gain any advantage to their contention from the judgments in Har Narain's case (supra). The contention of the petitioners that as the Court had allowed leave to appeal, application for condonation of delay could not be dismissed is misconceived and unfounded. It is only after the application for leave to appeal was allowed, stage to consider application for condonation of delay arrived, being a next step in the proceedings.

9. In view of what has been discussed herein above, finding no merit, the petition fails and is accordingly dismissed in limine.