
(1983) 08 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1844 of 1975

Budh Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 18-08-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1983) 08 P&H CK 0003

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : Suresh Amba, for the Appellant;

Judgement

D.S. Tewatia, J.—Civil Revision No. 1844 of 1976 is directed against the order dated 21.9.1976 while Civil Revision No 407 of 1977 is directed against the order dated 5-9-1975 of the Additional District Judge, Ropar. Both the revision petitions are inter-connected and raise a common question of law and fact and therefore, a common order is proposed for them.

2. The Additional District Judge dismissed the application of the petitioner for setting aside the order dated 5 9-1975 whereby the reference u/s 18 of the Land Acquisition Act was dismissed in default of prosecution.

3. The ground urged by the petitioner in the application for the restoration of the reference was that the petitioner is serving in the army and was posted in Kashmir and since the nature of his service did not permit him to personally prosecute the reference application, he appointed his brother as his attorney who also being a teacher and a government employee, it appears, could not fully look after his interest with the result that on the date in question i.e. 5-9-1975 his reference application was dismissed in default as the counsel engaged although was present in court, stated that he had no instructions.

4. The Reference Court while dismissing the application had made reference to various dates on which the reference was adjourned at the instance of the

petitioner's counsel for evidence; that the date on which the reference was actually dismissed, adjournment was given on payment of Rs. 20/- as costs. Since on that date neither the petitioner nor his brother was present to pay the costs, the counsel, therefore, pleaded no instructions.

5. In my opinion, the order of the Reference Court in dismissing the application has led to the miscarriage of justice. The petitioner had shown sufficient reason for recalling of the order dated 5-9-1975. He had examined his brother in whose favour power of attorney had been executed. He stated that on the given date he could not get leave and therefore, he could not be present and pay the costs. No counter evidence has been led on behalf of the other side. In the circumstances, the word of Narang Singh that he being Government teacher could not secure leave and so could not be present on that date and pay the costs, ought to have been accepted as true.

6. The petitioner had also shown sufficient reasons for con-doing the delay in filing the application. The petitioner had mentioned that Narang Singh, petitioner's brother, had informed him by letter after 15 days of the dismissal of the application that the reference application had been dismissed and that there after it took him time to arrange for leave from the army and move the application in question for resumption of the reference application. There was no reason on the part of the Court to disbelieve the version of the petitioner, more so, when the same has not been contradicted by the other side.

7. For the reasons aforementioned, I allow these revision petitions, set aside the judgment dated 21.9.1976 and allow the application under Order 9 Rule 4 read with Section 151 C.P.C. and further set aside the order dated 5.9.1973.

8. Before parting with the judgment I may advert to application (C.M. No. 906/CII of 1977) u/s 5 of the Limitation Act read with Section 151 C.P.C. for condonation of delay. While admitting the C.R. No. 404 of 1977, the admitting Bench passed no express order in regard to that. Since, the existence of the condonation application must have been in the knowledge of the admitting Bench, so the order admitting the revision petition must be treated as impliedly condoning the delay as well.

9. Since such an order would be an ex-parte order, as the petition was admitted in the absence of other party, so, even at the final stage the respondent was well within its rights to raise an objection to the delay in filing of the said revision petition. Even now the revision petition is not being opposed by the respondent, so the order of the admitting Bench by implication condoning the delay has to be sustained. Even otherwise, sufficient ground is shown for condoning the delay. Hence C.M. No. 606/CII of 1977 in C.R. No. 407 of 1977 is allowed.