

(2009) 01 P&H CK 0166
In the Punjab And Haryana At Chandigarh

Central Bank of India

APPELLANT

Vs

Nachhattar Singh

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Citation : (2009) 154 PLR 51 : (2010) 8 RCR(Civil) 264

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The brief facts giving rise to filing of these application are that the applicant/appellant-Bank filed a Civil Suit for recovery against (respondent No. 3-M/s Uptodate Garments, Bank Road, Muktsar/borrower) which was decreed on 16.2.1989. Since the property was mortgaged in favour of the applicant/appellant-Bank, the decree also provided for sale of the mortgaged property. During execution proceedings of the aforesaid decree, the said property was sold and defendant No. 4 (now respondent No. 5) purchased the property in dispute for Rs. 92,000/-The sale was confirmed by the court and sale certificate was also issued on 12.8.1992. Defendant No. 4 took possession of the property in dispute on 19.8.1992. The plaintiff-respondent Nos. 1 and 2 filed Civil Suit No. 220/92 of 8.10.1992 for declaration and permanent injunction claiming that they are owners in possession of the house property as detailed in the heading of the plaint and defendants have no concern with the same. It was pleaded by the plaintiffs that they had purchased the suit property from the defendants i.e., Sohan Lal vide sale deed dated 30.4.1985 for Rs. 12,000/- and were put in possession of the suit property. Plaintiffs had made inquiries regarding the title of the vendors and after satisfying them about clearance of title purchased the same. The plaintiffs were bonafide purchasers for valuable consideration without notice of prior change. It was further stated that the plaintiffs had spent Rs. 30,000/- for filling the loose earth and had spent Rs. 2,50,000/- for raising construction over it and the defendants have no concern with the property. To

the surprise of the plaintiffs on 23.8.1992, defendant Nos. 2 and 3 along with other persons came to take possession of the suit property. On inquiries made by the plaintiffs, they came to know that defendant Nos. 3 and 4 in order to defeat the rights of the plaintiffs in collusion with defendant No. 1 without any notice to then plaintiffs suffered a collusive decree and thus the proceedings of the decree dated 16.2.1989 and subsequent proceedings are illegal, null and void and are not binding upon them.

2. Upon notice, the suit was contested by the defendants and it was stated that the property was under mortgage with the bank. The attachment and sale was effected at the spot which was to the knowledge of the plaintiffs. They did not choose to file objections under Order 21 Rule 58 C.P.C. The property was sold in the execution. The present suit was filed in connivance with Sohan Lal defendant No. 3. While denying all the allegations of the plaintiff, it was stated by the defendant No. 1 that the plaintiffs never purchased the property in dispute and the sale deed was forged and fabricated document. Defendant No. 4 in his written statement stated that he had purchased the property in dispute for Rs. 92,000/- in the auction. The sale was confirmed by the court and sale certificate was issued on 12.8.1992 and he took the possession of the property in dispute on 19.8.1992. The plaintiffs were not in possession of the suit property at the time of filing of the suit and the same is not maintainable. Defendant No. 4 also set up counter claim for mandatory injunction directing the plaintiffs to deliver possession of the property purchased by him in auction. The aforesaid suit was dismissed by the trial Court vide its judgment and decree dated 30.9.1997 and the counter claim of defendant No. 4 was allowed.

3. Aggrieved with the aforesaid decision, respondent Nos. 1 and 2 (Nachhattar Singh and Bhupinder Kaur) filed two Civil Appeal Nos. 490/20/12/1997 and Civil Appeal No. 491/20.12.1997 which were allowed by a common judgment passed by the Additional District Judge, Muktsar vide judgment and decree dated 17.3.1999. The suit of the plaintiff-appellants was decreed for declaration to the effect that they are owners in possession of the house in dispute and the defendant-respondents were restrained from dispossessing them forcibly and except in due course of law. The counter claim filed by defendant No. 4 was dismissed with costs. However, it was held that defendant No. 4 shall be entitled to recover back the purchase money from defendant No. 1 in accordance with law.

4. Aggrieved by the aforesaid judgment and decree dated 17.3.1999, passed by the lower Appellate Court, the applicant/appellant-Bank had filed R.S.A. No. 3203 of 1999 in Civil Appeal No. 490 of 20.12.1997. The aforesaid appeal was admitted vide order dated 1.10.1999. Thereafter, the applicant/appellant-Bank moved Civil Misc. No. 5440-C of 2001 for staying the operation of the impugned judgment and decree dated 17.3.1999 passed by the lower Appellate Court.

5. In this application, notice was issued to respondent No. 5 only and passing of the final order in the execution proceedings was stayed. Since respondent No. 5

was not being served this Court vide order dated 15.10.2001 had ordered for the issuance of fresh notices to respondent No. 5 on filing of process fee and correct address by the appellants within two weeks. The appellant-Bank did not file the process fee in compliance of the aforesaid order.

6. Vide order dated 28.2.2002, this Court ordered that if the correct address along with process fee is filed by the counsel for the applicant/appellant-Bank, fresh notice be issued and notice be also issued to respondent No. 5 through Jagrup Singh Sibia of Muktsar on payment of process fee and registered cover.

7. On 28.5.2002, none appeared on behalf of the appellant-Bank and the appeal was dismissed for non-prosecution. It also appears from the record that no process fee etc. was filed by the applicant/appellant-Bank in pursuance of the orders dated 28.2.2002.

8. The applicant-appellant/Bank has filed Civil Misc. No. 4026-C of 2007 in this Court on 15.12.2006 for restoration of the aforesaid appeal by recalling the order dated 28.5.2002, whereby the appeal was dismissed in default. The applicant/appellant-Bank has also filed an application i.e., CM. No. 4025-C of 2007 for condoning of delay in filing the aforesaid restoration application. According to this application, delay in filing the restoration application is 720 days, if counted from the passing of order dated 28.5.2002 and of 92 days, if counted from the date of knowledge. It has been also mentioned by the applicant-appellant/Bank in this application that the applicant/appellant-Bank learnt about the dismissal of the appeal for non-prosecution on 13.2.2004, when executing court passed an order and the applicant/appellant-Bank got a copy of execution application from the executing court. However, no prompt action could be taken by the applicant/appellant-Bank as their Assistant Manager Mr. M.L. Garg was involved in some personal dispute and in this process, he lost track of the case and could not inform the bank about subsequent hearing. It is also the plea of the Bank that the learned Counsel engaged by the applicant/appellant-Bank to conduct the appeal in this Court, did not inform the applicant the fate of the present appeal and keeping in view the same all the matters which were entrusted to him were decided to be taken back vide letter dated 15.4.2002 which is attached as Annexure A-I along with this application and in view of this reason many of the case files could not be traced in time and hence the present application for restoration could not be filed within the period of limitation. Learned Counsel for the applicant/appellant-Bank also stated that there is no malafide on the part of the applicant-appellant/Bank and there is involvement of public money and therefore, the present applications deserves to be allowed.

9. On the other hand, these applications have been contested by the counsel appearing on behalf of respondent No. 1 on the ground that the reasons mentioned in the application for condonation of delay are not sufficient and the applicant/appellant-Bank was handling the matter negligently from the very beginning and the casual and callous approach in pursuing the case cannot be a ground for condoning the delay taking the shelter of the fact that public money is

involved.

10. Learned Counsel for the respondent has argued that in spite of the fact that on their own showing the applicant/appellant-Bank came to know about the dismissal of the appeal for non-prosecution on 13.2.2004, yet the application for restoration of the appeal along with application for condonation of delay was filed in December, 2006 and the explanation given by the applicant/appellant-Bank is not plausible at all and is a cooked up story.

11. Learned Counsel for the respondent has also argued that there is no evidence placed on record by the applicant/appellant-Bank by way of affidavits of the concerned officials who were pursuing the case before this Court to show that they were diligently pursuing the case and they had no knowledge about the dismissal of the case with effect from 28.5.2002 to 13.2.2004 and thus it was prayed by the counsel that the application for condonation of delay in filing the restoration of the appeal be rejected.

12. I have heard learned Counsel for the parties and perused the record. From the stand taken by the applicant/appellant-Bank in the application for condonation of delay. I find that the applicant/appellant-Bank was not pursuing the case diligently.

13. From the facts as noticed above, it is clearly made out that in fact the applicant/appellant-Bank had taken no steps to serve the respondents in this case and in spite of the orders passed by this Court, they failed to comply with the same. Moreover, no explanation is forthcoming from the applicant/appellant-Bank with regard to the fact that order dated 28.5.2002 had not come to their notice with effect from 28.5.2002 upto 13.2.2004, the alleged date of knowledge. It has not been stated anywhere in the application for condonation of delay that prior to 13.2.2004, it was not to the knowledge of the applicant/appellant-Bank that the appeal has been dismissed for non-prosecution. No record of the applicant/appellant-Bank has been placed before this Court to show their bonafides. As per the stand of the bank because of the non-receipt of information from their counsel, the bank could not pursue the case properly and for that reason they had decided to withdraw the cases from the aforesaid lawyer. However, this stand taken by the Bank is absolutely false as the appeal was dismissed in default on 28.5.2002 whereas the letter Annexure A-I on which reliance has been placed by the applicant/appellant-Bank for taking action against his counsel is dated 15.4.2002 i.e., prior to the dismissal of the appeal and therefore, the same is irrelevant. It is the case of the applicant/appellant-Bank itself that vide letter dated 15.4.2002 (Annexure A-I), they had decided to withdraw the entire work from their counsel who was conducting the appeal on behalf of the applicant/appellant-Bank. On that date, the order of dismissal of the appeal for non-prosecution was not passed. In spite of the fact that the applicant/appellant-Bank has decided to withdraw cases from its counsel, yet they have not taken any step to make an alternative arrangement to pursue the present appeal. The present appeal was dismissed in default on 28.5.2002, i.e.,

after the withdrawal of work from its counsel. After withdrawal of work, the counsel was not supposed to keep track of the cases of the appellant.

14. Even the applicant/appellant-Bank has failed to explain the delay with effect from 13.2.2004 the alleged date of knowledge, till 15.12.2006 on which date the present application was filed. The only stand taken by the applicant/appellant-Bank in this regard is that on account of some personal difficulties of their Assistant Manager, Mr. M.L. Garg, the applicant/appellant-Bank could not take steps to file the present applications. However, neither any affidavit of the aforesaid Assistant Manager has been placed on record of the case nor any other material has been placed before the court to demonstrate that the stand taken by the applicant/appellant-Bank for condonation of delay is true and correct. The applications filed by the Bank also show the callous and negligent attitude on the part of the Bank while pursuing the case. It is specifically mentioned in the application for condonation of delay that there is delay of 720 days, if it is counted from the date of order and only 92 days, if counted from the date of knowledge. However, this assertion is incorrect and is not supported by any fact on record. There is delay of 1629 days from the date of order. No date has been mentioned regarding knowledge except 13.2.2004, if counted from that date, delay for filing is 1036 days. The Bank has failed to explain the aforesaid delay. Thus the Bank has even failed to explain the delay, what to talk of sufficient reasons of condoning such delay.

15. For the reasons recorded, I find no merit in the application for condonation of delay in filing the present application for restoration of the appeal and the same is hereby dismissed.

Since the application for condonation of delay in filing application for restoration has been dismissed, the application for restoration of the appeal is also dismissed.