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**(2002) 04 P&H CK 0075**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 55 of 1992**

Davinder Singh

APPELLANT

Vs

Captain Harjit Singh

RESPONDENT

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**Date of Decision :** 03-04-2002

**Acts Referred:**

**Citation :** (2002) 3 LJR 131 : (2003) 1 LLR 132 : (2002) 2 PLJ 48 : (2002) 3 RCR(Civil) 224

**Hon'ble Judges :** N.K.Sodhi, J

**Advocate :** Mr. O.P. Hoshiarpuri, Advocate.Mr. Kanwaljit Singh, Advocate.,  
Advocates for appearing Parties

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## Judgement

N.K. Sodhi, J.

1. Captain Harjit Singh (since deceased and now represented by his legal representatives) (hereinafter referred to as the respondent) filed a suit on 28.5.1985 for a mandatory injunction directing the Jalandhar Improvement Trust (for short the Trust) to demarcate plot No. 61 (now numbered as 23) (hereinafter called the plot) in the development scheme known as "55 Acres Scheme". He also sought delivery of possession of the said plot as a local displaced person. His grievance was that instead of delivering possession to him the Trust had allowed one Didar Singh to raise construction over the plot. The suit was dismissed by the trial court on 3.3.1987 and an appeal filed against that decision was accepted by the Additional District Judge, Jalandhar on 28.3.1989 and the suit was decreed. The Trust was directed to demarcate the plot measuring 1 kanals 19 marlas. A further direction was issued to deliver possession of the plot to the respondent. It may be mentioned that Didar Singh was also a defendant in the suit.

2. During the pendency of the aforesaid suit, Didar Singh and his son Devinder Singh filed a suit on 7.3.1986 only against the Trust seeking to restrain it from demolishing the construction raised by them over the plot alleging that the plot had been purchased by them from the Rehabilitation Department. The

respondent on learning about the institution of this suit moved as application 31.3.1986 for being made a defendant in the suit. This application was dismissed on 20.5.1986. The suit was decreed on 27.9.1988 against the Trust and the latter had been restrained from demolishing the construction raised by Didar Singh over the plot.

3. The respondent moved an application for the execution of the decree obtained by him and sought possession of the plot. In the execution proceedings the Trust expressed its inability to hand over possession to the respondent because of the decree obtained by Didar Singh and his son. It was then that the respondent sought permission from the District Judge, Jalandhar to file an appeal against the judgment and decree dated 27.9.1988 to which he was not a party. He also moved an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal. Both these applications were contested by Didar Singh and his son primarily on the ground that the respondent had no right to file an appeal against the decree dated 27.9.1988 as he was not a party to the suit in which that decree was passed and that in any case there was no ground to condone the delay. In order to dispose of these applications the lower appellate court framed the following issues :

"(1) Whether the appellant is entitled to appeal against the judgment and decree ?

(2) Whether there are sufficient grounds for condoning the delay in the presentation of the appeal by the applicant ?

(3) Relief."

On a consideration of the evidence led by the parties, the lower appellate court by order dated 18.10.1991 decided both the issues in favour of the respondent and consequently the prayers made in both the applications were granted. It is against this order that the present revision petition has been filed under Section 115 of the Code of Civil Procedure.

4. I have heard counsel for the parties and find no merit in the revision petition. It is true that the respondent was not a party to the suit in which the decree was passed in favour of Didar Singh and his son but there is no gainsaying the fact that this decree adversely affects the respondent. The question that arises for consideration is whether the respondent had a right to file an appeal. It is by now well settled that a person who is not a party to a suit can appeal with the leave of the appellate Court against the order or decree passed therein if it adversely affects him. In *P. Ammal v. State of Madras*, AIR 1953 Madras 485, a Division Bench of the Madras High Court presided over by Chief Justice Rajamannar after referring to the entire case law on the subject both in England and in India, held that under practice consistently followed by the English courts which is just and equitable practice and is in no way inconsistent with the doctrine that a right of appeal can only be created by a statute, a person who is not a party to the suit may prefer an appeal if he is affected by the judgment,

decree or order to the trial court provided he obtains leave from the court of appeal. Similar view has been expressed by Chief Justice Chagla in a Division Bench judgment of the Bombay High Court in *The Province of Bombay v. Western India Automobile Association*, AIR 1949 Bombay 141 wherein the learned Judges observed as under :

"The Civil Procedure Code does not in terms lay down as to who can be a party to an appeal. But it is clear, and this fact arises from the very basis of appeals, that only a party against whom a decision is given has a right to prefer an appeal. Even in England the position is the same. But it is recognised that a person who is not a party to the suit may prefer an appeal if he is affected by the order of the trial Court, provided he obtains leave from the Court of Appeal. Therefore, whereas in the case of a party to a suit he has a right of appeal, in the case of a person not a party to the suit who is affected by the order he has no right, but the Court of Appeal may in its discretion allow him to prefer an appeal."

5. Now what we have to examine is whether the lower appellate court was justified in granting leave to the respondent to file an appeal against the judgment and decree of the trial court. In the instant case, the answer to this question has to be in the affirmative. The decree passed in the suit filed by Didar Singh and his son had restrained the Trust from demolishing the construction raised by the plaintiffs therein and on the basis of the decree the Trust expressed its inability to deliver possession of the plot to the respondent in the execution proceedings. It is, thus, clear that the decree passed in the suit filed by Didar Singh and his son adversely affected the respondent even though he was not a party to that suit. In this view of the matter, the lower appellate Court was justified in granting leave to the respondent to file an appeal against that decree and it was right in deciding issue No. 1 in favour of the respondent and against the petitioner. No fault can, thus, be found with the impugned order of the lower appellate Court. It was contended by the learned counsel for the petitioner that the order dated 20.5.1986 dismissing the application of the respondent for being impleaded as a defendant in the suit would operate as *res judicata*. The argument is being noticed only to be rejected. There is no question to *res judicata* in such a situation.

The finding on issue No. 2 in regard to the sufficiency of grounds for condoling the delay was not seriously pressed before me.

In the result, the revision petition fails and the same stands dismissed with no order as to costs.