
(2015) 03 P&H CK 0224

In the Punjab And Haryana At Chandigarh

Case No : CM Nos. 2491, 2492, 2373 and 2381 of 2015 in CWP No. 6069 of 1990

Hardayal Kaur

APPELLANT

Vs

Union Territory and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 10(1), 8-A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21
Limitation Act, 1963 — Section 5

Citation : (2015) 03 P&H CK 0224

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : S.D. Sharma, Senior Advocate and Anupam Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The application bearing CM No. 2491 of 2015 has been filed under Section 5 of the Limitation Act, 1963 (here-in-after referred to as the "Limitation Act") for condonation of delay of 4330 days in filing the application bearing CM No. 2492 of 2015 for restoration of the writ petition, dismissed on account of non-prosecution on 10.04.2003.

2. In brief, the writ petition was filed by Hardayal Kaur wife of late Shri Gurcharan Singh, challenging the order dated 28.03.1990 (Annexure P-3), passed by the Adviser to the Administrator, Union Territory, Chandigarh, exercising the power of the State Government, under the Capital of Punjab (Development and Regulation) Act, 1952 (here-in- after referred to as the "Act") by which, order passed by the Estate Officer, Chandigarh, under Section 8-A of the Act, resuming the site in question was upheld. The writ petition was filed through Virinder Mittal and Kamal Sharma, Advocates. Shri Kamal Sharma, Advocate represented the petitioner Hardayal Kaur in the writ petition, which is evident from all the orders passed by this Court till the writ petition was admitted

and operation of the resumption order was stayed and it was on April 10, 2003, because of non-appearance of the petitioner, the writ petition was dismissed for non- prosecution.

3. The exact order passed by this Court is as under:-

"As no one turns up on behalf of the petitioners to press the writ petition, it is accordingly dismissed but without costs." 4. Although as per Article 122 of the Limitation Act, the limitation is 30 days, from the date of dismissal, for the purpose of filing an application for restoration but the present application has been filed after a delay of 4330 days.

5. Article 122 of the Limitation Act is reproduced as under:-

6. The petitioner Hardayal Kaur is alleged to have died on 28.08.1994 when the writ petition was pending. No effort was made at that time by her three sons, namely, Amrik Singh, Sukhdev Singh and Gurnam Singh, who are the residents of Mohali, Patiala and Chandigarh respectively, to become a party in the writ petition as her legal heirs rather they have filed the present application on the ground that they have received a notice on 07.05.2013 as to why they should not be evicted from the suit property because of the resumption order dated 28.03.1988. It is averred in the application that they have moved an application to the Estate Officer for recording their share in the suit property on the basis of natural succession but the Estate Officer, vide his order dated 11.11.2010, asked them to get the suit property restored. They filed the separate appeal under Section 10(1) of the Act which was dismissed by the Chief Administrator on 04.02.2013 and their revision filed before the Adviser to the Administrator also met the same fate on 20.12.2013. They filed the writ petition bearing CWP No. 1620 of 2014 which came up for hearing on 19.01.2015 before the Division Bench in which counsel appearing on behalf of the applicants prayed for time to file the application for restoration of the present writ petition.

7. In this application, besides the aforesaid facts, it is alleged that the applicants, sons of Hardayal Kaur, have come to know that their lawyer, namely, Virinder Mittal had left the practice since long and they were not aware of the pendency of the writ petition and the order of dismissal passed therein.

8. I have heard learned counsel for the applicants and perused the available record.

9. No doubt that the application for restoration should have been filed within 30 days from the date of dismissal of the writ petition on 10.04.2003 but still, as per Section 5 of the Limitation Act, the delay occurred in filing of the application can be considered for its condonation. In this regard, Section 5 of the Limitation Act is reproduced as under:-

"5. Extension of prescribed period in certain cases.-- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the

prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

10. It is categorically provided in Section 5 of the Limitation Act that the application under any of the provisions of the Code of Civil Procedure, 1908, except for the provision of Order XXI, can be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not making the application within such period.

11. The question is thus as to whether the sufficient cause has been shown by the applicants to condone the huge delay of 4330 days in filing the application for restoration of the writ petition.

12. The applicants' explanation that the advocate Virender Mittal engaged by their mother had left the practice long back is a lame excuse because the writ petition was filed not only by Virinder Mittal, Advocate but also by Kamal Sharma, Advocate as well and all the zimni orders available on record shows the presence of Kamal Sharma, Advocate, on behalf of the petitioner Hardayal Kaur. No explanation has been given as to why their advocate Kamal Sharma did not appear on 10.04.2003. It is also not averred in the application that Kamal Sharma, Advocate, has left the practice. It also cannot be believed that the applicants had no knowledge about the present litigation and they have not been meeting their mother who became a widow in the year 1976 and started pursuing the litigation initiated under Section 8-A of the Act, as far back as in the year 1988, especially when all the 3 applicants are the residents of Mohali, Patiala and Chandigarh respectively and have been pursuing their own cause before the Estate Officer after the death of their mother by filing an application to claim a share therein and did not opt to file an application to get the present writ petition revived till it was pointed out to them by the Court while hearing their CWP No. 1620 of 2014.

13. Thus, looking from any angle, the huge delay of 4330 days in filing the application for restoration remains unexplained and in the absence of any sufficient cause, the period of 30 days enshrined in Article 122 of the Limitation Act, cannot be further extended.

14. In view of the aforesaid discussion, I do not find any merit in the present application bearing CM No. 2491 of 2015 and hence, the same is hereby dismissed.

15. Consequently, all other pending applications are also dismissed.