
(2002) 07 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2427 of 1997

Kanwar Lal

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Limitation Act, 1963 — Section 5
Stamp Act, 1899 — Section 47A

Citation : (2003) 1 RCR(Civil) 345

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : P.S. Rana, for the Appellant; Naresh K. Joshi, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This revision petition filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity, the Code) is directed against the order dated 6.11.1996 passed by the District Judge, Karnal dismissing the appeal of the appellant-petitioner as barred by time, in which the order dated 30.1.1996 passed by the Distt. Revenue Officer-cum-Collector, Karnal (for brevity, Distt. Revenue Officer) was challenged. In his order dated 30.1.1996, the Distt. Revenue Officer has directed the appellant-petitioner to deposit a sum of Rs. 24,955/- as deficiency in the stamp duty and Rs. 223.75 as registration fee in the Government Treasury within a period of one month. This order was passed by the Distt. Revenue Officer exercising powers u/s 47-A of the Indian Stamp Act, 1899 (for brevity, the Act") (as applicable to Haryana). The appeal of the appellant-petitioner has been dismissed as time barred as the appeal was not filed in a specified period of 30 days.

2. In order to focus the controversy raised in its proper perspective, brief facts may first be noticed. The appellant-petitioner had purchased a plot at the rate of Rs. 100/- per square yard which is alleged to be in his actual physical possession since long time. It is further averred that the plot was unlevelled and was in the

shape of a pond. The vendor since belonged to Delhi instructed the appellant-petitioner to get the sale deed executed/registered at Delhi. It is further claimed that the rate of Rs. 100/- per square yard was the actual sale price in such type of inferior plots which was fixed and paid by the appellant-petitioner. It is further alleged that sale deed in respect of plot No. 21 was registered and executed in favour of the appellant-petitioner in the year 1994 at the rate of Rs. 250/- per square yard. Therefore, it was claimed that the sale deed executed vide Vasika No. 422/1 dated 10.3.1993 reflects correct value and accordingly adequate stamp papers of the value of Rs. 20058/- has been paid.

3. The Sub Registrar, Karnal exercising powers u/s 47-A of the Act suspected the evasion of stamp duty by the appellant-petitioner and the case was sent to the Distt. Revenue Officer, Karnal on 12.12.1995. A notice was issued to the appellant-petitioner on 29.12.1995 for reply and evidence. After recording the statement of various witnesses like Patwari of the area and holding the enquiry in which full opportunity was afforded to the appellant-petitioner to appear and present the proof, the Distt. Revenue Officer reached the conclusion that the market value would be Rs. 900/- per square yard. Therefore, a direction was issued to the appellant-petitioner to deposit a total sum of Rs. 25,178.75 paise in the Government Treasury within one month (Rs.24,955/- deficiency in the stamp duty and Rs. 223.75 paise as registration fee) vide order dated 31.1.1996. There is some controversy between the parties as to whether the order was pronounced on 30.1.1996, the appellant-petitioner filed an appeal on 6.8.1996 after obtaining certified copy of the order. Alongwith the appeal, an application u/s 5 of the Limitation Act, 1963 seeking condonation of delay was also filed as the appeal was required to be filed within 30 days. Despite the fact that no reply to the application was filed by the respondents, the appeal was dismissed as time barred by the learned District Judge, Karnal vide order dated 6.11.1996. The operative part of the order passed by the District Judge reads as under:-

"At the outset it was pointed out by the learned Govt. Pleader that the appeal is barred by time in so far as the order had been announced on 30.1.1996 whereas the appeal was presented in August 1996. He pointed out that even the copy was applied on 17.7.1996 so that it was also after the expiry of prescribed period of limitation of 30 days.

In reply to the above argument the learned counsel pointed out that he had moved an application for condonation of the delay which occurred primarily because he came to know of the order only on 12.7.1996 when he received a notice from the respondents for the deposit of the money on 15.7.1996 thereafter he approached the court and applied for a certified copy which he received on 24.7.1996 so that the appeal was within time.

The argument advanced by the learned counsel for the appellant does not appeal to me because the order of the District Revenue Officer shows that it was announced in the presence of the appellant himself. His assertion, therefore, that he came to know of the order only on 12.7.1996 is wholly mis-conceived and mis-

placed."

4. I have heard Mr. P.S. Rana, learned counsel for the petitioner and Mr. Naresh K. Joshi, Assistant Advocate General, Haryana for the respondents.

5. Mr. P.S. Rana has argued that the appellant-petitioner acquired knowledge about the passing of the order dated 30.1.1996 only on 12.7.1996 and he instituted the appeal on 6.8.1996 after obtaining certified copy of the order. Alongwith the appeal, an application seeking condonation of delay was also filed which was not even contested as no reply had been filed. Therefore, the contention raised is that in the absence of any opposition to the application seeking condonation of delay, the appeal should have been considered within time and the case should have been heard on merits. The learned counsel has further contended that the appellant-petitioner was not present on 30.1.1996 before the Distt. Revenue Officer and his presence has been wrongly recorded.

6. On the contrary, Mr. Naresh K. Joshi has argued that according to the record, the order was announced in the presence of appellant-petitioner on 30.1.1996 and, therefore, it cannot be pleaded that he was not present. According to the learned counsel even the District Judge has made reference to the notings on the file which categorically show that the order was announced in presence of Kanwar Lal.

7. I have thoughtfully considered the rival contentions raised by learned counsel for the parties and have perused the record. I am of the considered view that the impugned order dated 6.11.1996 dismissing the appeal as barred by time is not sustainable because there are obvious contradictions between the recording of presence in the certified copy of the order as well as in the recording of interlocutory order on 30.1.1996. In the certified copy of the order placed on record, the presence of appellant-petitioner Kanwar Lal has been recorded. However, in the interlocutory order dated 30.1.1996 recorded on the original file, it is recorded that the counsel for the appellant-petitioner was present at the time of pronouncing the order on 30.1.1996. The attested copy of the zimni order has been placed on record by the appellant-petitioner. A perusal of various other interlocutory orders would show that on certain dates, the presence of the appellant-petitioner has been recorded and on other dates, the presence of his counsel has been recorded. For example on 29.12.1995, 11.1.1996 and 17.1.1996 the appellant-petitioner was present. Whereas on 25.1.1996 and 30.1.1996 the counsel for the appellant-petitioner is recorded to be present. Therefore, the conclusion reached by the learned District Judge that the order of Distt. Revenue Officer was announced in the presence of appellant-petitioner cannot be sustained and the same is liable to be set aside.

8. I am further of the view that the appellant-petitioner must have acquired knowledge of the order dated 30.1.1996 on 12.7.1996 when he received a notice from the respondents calling upon him to deposit the deficit amount by 1.5.7.1996. If the period of one month is counted from that date, then the filing

of appeal on 6.8.1996 would be well within time as provided by Sub-section (4) of Section 47-A of the Act. This liberal approach of granting condonation of delay has to be followed in view of the fact that right of one appeal should always be available to a litigant especially when the delay is not extraordinary and satisfactory explanation has been tendered. Order in this case was passed on 30.1.1996 and the appeal had been filed on 6.8.1996. Such an approach has also been recommended by the Supreme Court in a recent judgment in the case of Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, . The observations of their Lordships read as under:-

"This it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper-technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

A similar approach has been recommended by the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , State of Haryana Vs. Chandra Mani and others, : Nand Kishore Vs. State of Punjab, and State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, . Therefore, this revision petition deserves to be allowed.

9. For the aforementioned reasons, this revision petition is allowed. The delay in filing the appeal is condoned. The District Judge, Kamal is directed to hear the appeal on merits.

10. Parties through their counsel are directed to appear before the District Judge, Karnal on 5.8.2002.