
(1991) 10 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3292 of 1990

Raj Kumar

APPELLANT

Vs

Nand Lal

RESPONDENT

Date of Decision : 09-10-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 8
Limitation Act, 1963 — Section 5

Citation : (1991) 10 P&H CK 0076

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : M.L. Sagar and O.P. Sharma, for the Appellant; Arun Jain, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—The respondent filed a suit for possession by way of redemption of the mortgage property. A preliminary decree was passed against the Petitioner on 25-1-1982. The appeal against the said decree was dismissed by the Additional District Judge and the second appeal also resulted in dismissal on 27-2-1986. The mortgagor filed an application for passing a final decree on 29-8-1985, after depositing the money as directed by the trial Court. The mortgagee inter alia, took an objection that the property on the second floor and above and also the portion abutting the road on the first floor was not the part of the mortgaged property and, therefore, no final decree could be passed with respect to that property. But the trial Court after considering the objections raised before it allowed the mortgagor's application and passed the final decree for possession on 11-11-1986. Aggrieved thereby the mortgagee preferred an appeal before the District Judge. The application for obtaining certified copy of the aforesaid order dated 11-11-1986 was made by the mortgagee on 22-11-1986 and the copy was prepared on 16-4-1987. The mortgagee was required to collect the certified copy on 21-4-1987 but he in fact collected it on 14-5-1987. The appeal was filed on 2-6-1987 and that too, without attaching the

copy of the decree sheet, the certified copy of which was not applied till then. An application for obtaining certified copy of the decree sheet was moved on 2-6-1987, and the copy was supplied on 18-8-1987 and filed in Court the same day. There was, thus, a delay of 164 days in filing the appeal. Alongwith the appeal, the mortgagee also filed an application u/s 5 of the Limitation Act for condonation of delay. This application was dismissed by the learned Additional District Judge vide order dated 16-10-1990 and it is against this order that the present revision has been filed.

2. Counsel for the petitioner submitted that the petitioner had gone on pilgrimage from 23-4-1987 to 20-5-1987 and thereafter remained ill upto 1-6-1987. He, thus, submitted that the appeal was filed on 2-6-1987 after the petitioner recovered from fever and dysentery. The petitioner was thus, prevented by a sufficient cause in not filing the appeal within the period of limitation and, therefore, the delay deserved to be condoned. I do not find any merit in this contention of the learned counsel. There is no explanation whatever as to why the certified copy of the judgment was not collected on 21-4-1987 and the appeal not filed before going on pilgrimage. Apart from this, the learned Additional District judge has found as a matter of fact and rightly so that the story of petitioner having gone on pilgrimage from 23-4-1987 to 20-5-1987 is not correct. After appreciating the evidence led on the record the learned Addl. Distt. Judge also disbelieved the version of petitioner of having fallen ill. Moreover, it has also not been explained by the Counsel for the petitioners as to why the certified copy of the decree sheet dated 11-11-1986 was not applied for within the period of limitation. As noticed above, the certified copy of the decree sheet was filed in the appellate Court after 164 days. Therefore, in my view, the learned Additional District Judge has rightly dismissed the petitioner's application for condonation of delay in filing the appeal.

3. Otherwise on merits as well, the only objection of the petitioner was that the property on the second floor and above and also the portion abutting the road on the first floor was not the part of the mortgaged property and therefore, no final decree could be passed with respect thereto. This objection on the face of it seems to have been taken to delay his dispossession from the property. Once a preliminary decree had been passed and confirmed upto this Court, it was not open to the mortgagee now to contend that the property on the second floor and the portion abutting the road on the first floor was not a part of the mortgaged property. This objection was available only before passing of the preliminary decree has been passed in respect of the entire property, the final decree has to be passed in terms thereof. The only effort on the part of the petitioner is to delay the delivery of possession of the mortgaged property and nothing else. Consequently, this revision fails and is hereby dismissed with no order as to costs.