
(2005) 04 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2052 of 2005

Shankar Singh

APPELLANT

Vs

Gram Panchayat and Another

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17, 151, 152, 153
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 17, 17(1), 5

Citation : (2005) 140 PLR 706 : (2005) 3 RCR(Civil) 768

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

Bench : Single Bench

Advocate : S.K. Arora, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—Plaintiff Shankar Singh has approached this Court under Article 227 of the Constitution challenging order dated 2.12.2005 passed by the Addl. District Judge (Fast Tract Court), Ferozepur condoning delay in filing of appeal. The Fast Track Court had condoned the delay on the principal ground that the plaintiff-petitioner was in collusion with Jamuna Bai who was the earlier Sarpanch of the Gram Panchayat who had got the appeal dismissed in default. On the ground of fraudulent conduct of the petitioner and earlier Sarpanch the application filed u/s 5 of the Limitation Act, 1963 (for brevity "the Act") seeking condonation of delay in filing the appeal has been allowed.

2. Brief facts of the case are that the plaintiff-petitioner filed a suit for possession of land measuring 45 kanals 16 marlas and also claimed mense profits @ Rs. 10,000/- per acre per year against the Gram Panchayat, respondent. On 12.1.2002 the suit was decreed by the Id. Civil Judge (Jr. Division), Ferozepur. A copy of the judgment and decree has been placed on record. An appeal was filed against the judgment and decree dated 12.1.2002 through Jamna Bai who was the then Sarpanch of Gram Panchayat Village Mohkam Ariana which came up for

consideration before the 1d. Addl. District Judge on 11.3.2002. The appeal was dismissed in default on 17.9.2002 under Order 41 Rule 17 C.P.C.. The aforementioned order reads as under:

"Case again called several times after 11.30 AM but none appeared for the parties. Even notice to respondent not issued for want of PF/Munadi fee. It is already more than 12.30 noon. Therefore, this appeal is dismissed in fault under Order 41 Rule 17 C.P.C. File be consigned to record room."

3. Therefore another appeal was filed by Gurdip Singh who later became Sarpanch and along with one Balbir Singh, Member Panchayat against the judgment and decree dated 2.1.2002. They also filed an application u/s 5 of the Act praying for condonation of delay in filing the appeal. The said appeal was dismissed as withdrawn on 12.3.2003 and the order reads as under:

"No reply to the application is filed. However, the appellants have expressed not to proceed with this case any further and to that effect their statements have also been recorded. As such in view of their above statements this appeal as well as the application filed u/s 5 of the Limitation Act is dismissed as withdrawn. File be consigned to the record room."

4. It is pertinent to mention that Gurdip Singh through whom the appeal has been filed later on was elected as Sarpanch in the Gram Panchayat election held in June, 2003. On 13.11.2003, the afore-mentioned Gurdip Singh again filed an appeal against the judgment and decree dated 12.1.2002 on behalf of the respondent Gram Panchayat. Alongwith the appeal an application u/s 5 of the Act seeking condonation of delay in filing the appeal was also moved. It was claimed in the application that although the earlier appeal filed through Gurdip Singh was withdrawn as he was not a Sarpanch of the Gram Panchayat at that time. He was not competent at that time to file the appeal. Claiming that he has the right to protect village land and the filing of appeal is in the interest of the proprietors of the village, the delay was stated to be unintentional and was on account of the circumstances explained in the application. After notice and contest by the plaintiff-petitioner disclosing the filing of earlier appeal, the learned Addl. District Judge condoned the delay. The Ld. Addl. District Judge framed an issue as to whether there was sufficient cause for condonation of delay and found that fraudulent conduct of the earlier Sarpanch Jamuna Bai was evident from the record viz. firstly in permitting the passing of judgment and decree dated 12.1.2002 and then non prosecuting the appeal and allowing it to be dismissed in default by not depositing process fee or munadi fee.

5. Shri S.K. Arora, learned counsel for the plaintiff-petitioner has argued that once an appeal was dismissed under Order 41 Rule 17 C.P.C. on 17.9.2002 no further appeal was competent by Gurdip Singh. Learned counsel has also submitted that even the appeal later on filed by Gurdip Singh alongwith Balbir Singh, Member Panchayat was got dismissed as withdrawn without obtaining any permission to file fresh, one on the same cause of action. Learned counsel has

insisted that delay of 675 days has been condoned without any sufficient cause.

6. I have thoughtfully considered the submissions made by the learned counsel and am of the view that this petition deserves to be dismissed. It is well known that "fraud avoids all judicial acts, ecclesiastical or temporal". The aforementioned observation was made "by the Chief Justice Edward Coke of England about three centuries ago which has been quoted with approval by the Supreme Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, . It has been held that a decree obtained by fraud has to be treated as a nullity and can even be questioned in collateral proceedings. The observations of Hon^{ble} Mr. Justice Kuldeep Singh in this regard reads as:

"fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and nonest in the eyes of law. Such a judgment/decreed-by the first court or by the highest court-has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

7. Similar question has been raised in the case of *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, . Relevant observations of their Lordships read as under:

"Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the court is misled by a party or the court itself commits mistake which prejudices a party, the Court has the inherent power to call its order."

8. The afore-mentioned view has been followed by the Supreme Court in the case of *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, . In that case an award of compensation was secured by the claimants from the Motor Accident Claims Tribunal by practising fraud. When the Insurance Company secured information about the fraud it filed a petition purportedly under Sections 151, 152 and 153 of the Code for recall of the award. The Tribunal as well as the High Court dismissed the petition by observing that there was no power of review with the Courts. Setting aside the order of both the Courts, and approving the view taken in *S.P. Chengalvaraya Naidu's* case and *Indian Bank's* case (supra) their Lordships observed as under;

"No one can possibly fault the Insurance Company for persistently pursuing the matter up to this Court because they are dealing with public money. If they have discovered that such public fund, in a whopping measure, would be knocked off fraudulently through a fake claim, there is full justification for the Insurance Company in approaching the Tribunal itself first. At any rate the High Court ought not to have refused to consider their grievances, What is the legal remedy when a party to a judgment or order of court later discovered that it was obtained by fraud?."

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"It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants, If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it, would not be possible for the Company to file statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wrangled though fraud or " misrepresenting of such a dimension as would affect the very basis of the claim."

9. The afore-mentioned judicial principle has been well recognised by Section 17 of the Act which provides that period of limitation would not begin to run until the applicant had discovered the fraud or the mistake or with reasonable diligence would have discovered it, Section 17(1) of the Act reads as under;

"17. Affect of fraud or mistake,- (1) Where, in the case of any suit or application for which a period of limitation, is prescribed by this Act,-

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent: or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake: or

(d) where any document necessary to establish the right of the plaintiff or applicant has been frequently concealed upon him; the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it, or in the case of concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:"

10. A perusal of Section 17 of the Act makes it evident that the period of limitation would start running only on discovering the fraud and not earlier to that date.

11. If the facts of the present case are examined in the light of the principles laid down by the Supreme Court in the above noted judgments as well as Section 17 of the Act, it becomes evident that no exception can be taken to the view taken

by the Ld. Addl. District Judge. After detailed analysis of the evidence produced, it has been concluded that there was a collusion between the plaintiff-petitioner and the earlier Sarpanch Jamna Bai, The afore-mentioned collusion naturally continued when the appeal was filed by Jamna Bai and the same was dismissed on 17.9.2002 for non prosecution for want of process fee/munadi fee, Gurdip Singh who has now filed the appeal and became Sarpanch later on felt absolutely helpless. Apparently the appeal filed by him later was not competent as he was not authorised to maintain the appeal on behalf of the Gram Panchayat. As a consequence that appeal filed by him alongwith one Member Panchayat Balbir Singh was dismissed as withdrawn and therefore application u/s 5 of the Act was also dismissed as withdrawn on 12.3.2003.

12. The land in dispute is a public land and the plaintiff-petitioner might be taking undue advantage of his collusion with the earlier Sarpanch Jamna Bai. Whenever there is a fraud played on public property, all technical rules or procedures have to be ignored as has been observed by the Supreme Court in United India Insurance Co.'s case (supra). It has even permitted challenge to a fraudulent decree in a collateral proceedings as has been observed in the cases of S.P. Chengalvaraya Naidu and Indian Bank cases (supra).

13. It is also pertinent to make a reference to the judgment of the Supreme Court in the case of 2002 (1) ALT 48 (SC) wherein the delay in filing the appeal was condoned u/s 17 of the Act on the ground that intelligence later revealed that the documents presented by the respondents were not authentic. After detection of fabrication of documents, the Commissioner of Customs filed an appeal alongwith an application for condonation of delay. The Tribunal declined to condone the delay but the Supreme Court set aside that order by reminding the Tribunal that Section 17 of the Act nullifies all the fraudulent acts. The Tribunal Should have felt satisfied about the existence of fraud and should have condoned the de-lay. The afore-mentioned principles are also fully applicable to the facts of the present case. Therefore, there is no scope for interference in the impugned order in exercise of jurisdiction under Article 227 of the Constitution which can only be invoked by a person who himself is doing equity; as the maxim goes; whosoever comes to equity must do equity.

14. It is ordinarily true that an appeal filed and dismissed earlier would be considered to have upheld the judgment and decree of the trial Court. However, in cases where the findings of collusion and fraud are recorded such a consideration is absolutely displaced. Therefore there is no merit in the argument raised by the learned counsel for the petitioner.

15. For the reasons stated above, this petition fails and the same is dismissed with costs.