
(2013) 10 P&H CK 0137

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 7374 of 2012 (O and M)

Sher Singh and Others

APPELLANT

Vs

Improvement Trust and Others

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0137

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : S.S. Dinarpur, for the Appellant; Jagdish Manchanda, Advocate and Mr. Balbir Kumar Saini, Advocate, for Respondent Nos. 32 and 33, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.

CM Nos. 30512 to 30516. CII of 2012

1. All these applications for impleading legal representatives (LRs) of some of the deceased respondents before the lower appellate court are allowed subject to all just exceptions.

CR No. 7374 of 2012

Some of the plaintiffs have filed this revision petition under Article 227 of the Constitution of India assailing order dated 31.8.2012 Annexure P/4 passed by the lower appellate court thereby condoning delay of 362 days in filing the first appeal by defendant no. 1 - Improvement Trust, Yamuna Nagar (respondent no. 1 herein-appellant before the lower appellate court).

2. Suit filed by petitioners and proforma respondents no. 3 to 42 (who include LRs of some of the deceased plaintiffs) was decreed by the trial court vide judgment and decree dated 28.2.2011. Defendant no. 1 Improvement Trust filed first appeal on 28.3.2012 against judgment and decree of the trial court. There

was delay of 362 days in filing the first appeal. Accordingly, defendant no. 1 (appellant before the lower appellate court) filed application Annexure P/2 for condonation of the said delay on grounds mentioned in paragraph 3 of the application which is reproduced hereunder:-

3. That the present appeal has been filed after the delay of 362 days because the facts regarding the judgment and decree dt. 28.02.2011 came to the knowledge of the appellant/defendant No. 1 today on 27.03.2012 due to many reasons i.e. shortage of staff in the office, delays in correspondence, heavy work load of the office etc. It is submitted that public interest at large is also involved in matter in issue. Hence this application.

3. Plaintiffs (who are respondents before the lower appellate court) filed reply Annexure P/3 to application Annexure P/2 and controverted the averments made in the application. It was pleaded that judgment and decree dated 28.2.2011 of the trial court were very much in the knowledge of defendant no. 1 since inception. It has been wrongly pleaded by defendant no. 1 in its application that the said judgment and decree came to its knowledge on 27.3.2012 only. On the contrary, Superintendent of defendant no. 1-Improvement Trust had placed copy of judgment and decree dated 28.2.2011 of the trial court before Chairman of defendant no. 1-Trust on 23.3.2011 vide note Annexure P/5 and the Chairman marked the matter for taking legal opinion and thereafter Advocate of defendant no. 1-Trust gave opinion dated 20.4.2011 Annexure P/6 and therefore, there is no ground to condone the aforesaid long delay.

4. I have heard counsel for the parties and perused the case file.

5. Counsel for the parties reiterated their respective versions as noticed hereinbefore. Counsel for respondent no. 1 has also relied on judgment of Hon"ble Supreme Court in the case of State (NCT of Delhi) Vs. Ahmed Jaan, and contended that public property is involved in the case and therefore, interest of public would suffer if delay in filing the appeal is not condoned. It was also submitted that plaintiffs can be compensated by costs for condoning the delay in filing the first appeal.

6. I have carefully considered the rival contentions. Averments made by defendant no. 1 in its application Annexure P/2 as extracted hereinbefore even if taken at face value are not sufficient to condone the long and inordinate delay of almost one year in filing the first appeal. Only vague and general averments have been made in the application to seek condonation of such long delay. Such vague and general averments are not sufficient to condone the long delay of almost one year.

7. In addition to the aforesaid, the plea taken by defendant no. 1 in its application Annexure P/2 that judgment and decree dated 28.2.2011 of the trial court came to the knowledge of the defendant no. 1 on 27.3.2012 only is patently false and merely on this ground, not only the application Annexure P/2 deserves dismissal but also Chairman of defendant no. 1-Trust is liable to be

proceeded against for making false averment. Note dated 23.3.2011 Annexure P/5 was put up before the Chairman for seeking legal opinion regarding judgment and decree of the trial court. Legal opinion was accordingly sought and was furnished by the concerned Advocate vide opinion dated 20.4.2011 Annexure P/6. In these circumstances, plea of defendant no. 1 that the judgment and decree of the trial court came to its knowledge on 27.3.2012 only is patently false. Consequently, application Annexure P/2 filed by defendant no. 1 (appellant before the lower appellate court) deserved to be dismissed with heavy costs.

8. However, lower appellate court has allowed the said application and has condoned the aforesaid long delay without even imposing any cost on defendant no. 1 for condonation of the said delay. Impugned order of the lower appellate court is patently perverse and illegal and suffers from jurisdictional error.

9. Judgment in the case of Ahmed Jaan (*supra*) is not applicable to the facts of the instant case and contention based thereon advanced by counsel for respondent no. 1 cannot be accepted. In the reported case, there was delay of five years in filing the revision petition by State and the Standing Counsel explained that the file was misplaced in his office due to paucity of space. The explanation was found to be plausible. In the instant case, however, there is practically no explanation for the long and inordinate delay of 362 days in filing the first appeal as the explanation furnished for the same is patently false as noticed hereinbefore. Consequently, in the instant case, the aforesaid delay did not deserve to be condoned.

10. As regards loss of public interest and property, defendant no. 1-Trust is to blame itself for the same. Consequently, defendant no. 1 should initiate action in accordance with law against defaulting officers/officials for not preferring appeal within limitation and thereby causing loss to public property. On the basis of this contention, vested right of the plaintiffs cannot be snatched by condoning long delay in filing the first appeal without there being any ground much less sufficient ground for condoning the same. The plaintiffs cannot be compensated by costs for condoning the delay.

11. As a necessary consequence of the discussion aforesaid, the instant revision petition is allowed. Impugned order dated 31.8.2012 passed by the lower appellate court is set aside and application Annexure P/2 filed by defendant no. 1 for condonation of delay in filing the first appeal is dismissed and consequently, first appeal preferred by defendant no. 1 in the lower appellate court stands dismissed as time barred. Pending CM No. 30518. CII of 2012 for interim stay is disposed of as infructuous.