

(2008) 03 P&H CK 0172
In the Punjab And Haryana At Chandigarh

State of Haryana and Others

APPELLANT

Vs

Dal Chand and Others

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 1, Order 27 Rule 2

Citation : (2009) 1 ILR (P&H) 808 : (2008) 152 PLR 85

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Permod Kohli, J.—Heard the learned Senior D.A.G. Haryana at length.

2. Delay of 756 days in filing the appeal is sought to be condoned through the medium of this application. When the matter came up for consideration on 10.09.2007, learned Counsel for the applicant-appellants sought some time to inform the Court regarding the action taken against the officials/officers responsible for late filing of the appeal. Thereafter the applicant-appellants have placed on record letter No. 215/Surplus dated 15.01.2008 written by the Deputy Commissioner, Faridabad, to the Advocate General, Haryana, Chandigarh, accompanied with the order dated 11.01.2008 of the Collector, Faridabad. It has been communicated that Ram Maher, the then Naib Tehsildar (Surplus) Faridabad, Dr. Naresh Kumar, the then Naib Tehsildar (Surplus), Jeewan Dass the then Patwari and Deep Chand Patwari-Surplus, were liable for causing the delay of 756 days in filing the appeal. Jeewan Dass and Deep Chand, Patwaris, have been placed under Suspension vide order dated 11.01.2008. The Commissioner, Gurgaon Division, Gurgaon who is competent authority, has been requested to take disciplinary proceedings against Ram Mehar and Dr. Naresh Kumar, the then Naib Tehsildars (Surplus).

3. It is surprising that Dr. Naresh Kumar, Naib Tehsildar (Surplus) is present in Court and is still over looking the present appeal. He is one of those officers who

has been pinned own for dereliction of duty, but still deputed to follow the case.

4. As set up in the application, it is the case of the applicant-appellants that the judgment impugned was passed on 31.05.2005. Necessary application for obtaining certified copy was filed only on 25.08.2005, i.e. after about three months and the copy of the judgment was made available on 09.09.2005. Naresh Kumar, the then Naib Tehsildar (Surplus) Faridabad and Deep Chand, Patwari (Surplus), Faridabad, collected the brief of the case and certified copies of the judgment and decree, but inadvertently, the brief of the case and certified copies of the judgment could not be submitted to the office of the Advocate General, Haryana, Chandigarh, because of the fact that the post of Naib Tehsildar (Surplus) was vacant. It is stated that Naib Tehsildar (Surplus), Faridabad, has joined this post on transfer on 3.7.2006. This statement is self contradictory. On the one hand, it is stated that Naresh Kumar, the then Naib Tehsildar (Surplus) Faridabad and Deep Chand, Patwari, collected the certified copies of the judgment and decree and the brief and on the other hand, it is stated that the post of Naib Tehsildar (Surplus) was lying vacant and the same was filled up only on 03.07.2006. It was further mentioned that it was only on 19.03.2007 that Deep Chand, Patwari (Surplus), Faridabad, was assigned the duty to contact the Advocate General, Haryana at Chandigarh. No date is given as to when Deep Chand, Patwari, contacted the Advocate General, Haryana, at Chandigarh and when the Advocate General, Haryana, asked to supply the copies of the judgment of the trial Court. It is further mentioned that due to the mixing of the file and with other files, the appeal could not be filed in time. The averments made in the application are totally hotch-potch and do not make any head or tail of the story.

5. Learned Senior Deputy Advocate General, Haryana, submits that Naib Tehsildar (Surplus), Faridabad, is competent authority to file the appeal in this Court. It is beyond imagination that an officer of the rank of Naib Tehsildar (Surplus) is competent to file the appeal on behalf of the State. The action taken seems to be totally an eye wash. No senior officers, who was/is otherwise responsible to file the appeal, has been made responsible. As a matter of fact, even the suspension of some of the officials of the rank of Patwaris has been made only to convey to the Court that some action is being taken against the erring officers. The State property is being given away either by connivance or callousness on the part of the officers. This depicts sorry state of affairs. The averments made in the application are totally vague, self contradictory and do not inspire any confidence. The application is supported by an affidavit of one Giani Ram, Naib Tehsildar (Surplus) office of the Deputy Commissioner, Faridabad. It is relevant to observe here that the State appeals are being filed by Naib Tehsildars and not by any senior officer of the Government. Such an appeal is otherwise incompetent. State can only be represented by a competent officer who is duly authorised under rules of business of the Government or Order XXVII Rules 1 and 2 of the CPC or any other rules or an officer who is a party to the litigation. In the present case, the appeal has been preferred and this application

is made by a Naib Tehsildar with whom there is no authority under law and who is not even a party to the litigation. This application besides being incompetent, do not disclose any sufficient cause. I am constrained to dismiss this application with costs which is quantified at Rs. one lac, to be paid/recovered from the officers who are found to be responsible for de-reliction of duty.

6. The Chief Secretary, Government of Haryana, will initiate enquiry in this regard and depute a senior officer for conducting enquiry. After identifying the person(s) he will also ensure that action is initiated against the officers/officials who may be found responsible for de-reliction of duty and causing delay in filing the present appeal. The Chief Secretary will also ensure that in future appeals are filed on behalf of State by the competent official/person of the State and not by any incompetent officer.

7. Till the amount of cost is recovered from the erring/responsible officials/officers, the State of Haryana will deposit the same with the Haryana State Legal Services Authority, Chandigarh, within a period of four weeks.

8. As a consequence of the dismissal of the application for condonation of delay in filing the appeal, the appeal also stands dismissed.

9. A copy of this order be forwarded immediately to the Chief Secretary, Government of Haryana, for compliance. The compliance report shall be filed before the Registrar (Judicial) of this Court within a period of four months.