
(2014) 10 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 5381 of 2013 (O and M)

Sukhwinder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Limitation Act, 1963 — Section 5
Sikh Gurdwaras Act, 1925 — Section 10

Citation : (2015) 179 PLR 255

Hon'ble Judges : Ajay Kumar Mittal, J; Gurmit Ram, J

Bench : Division Bench

Advocate : P.K.S. Phoolka, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.

1. By way of present appeal filed by a person who was not even party before the trial court seeks to revive a matter which had been settled by the judgment and decree dated 19.9.1975 passed by the Sikh Gurdwaras Tribunal, Punjab at Chandigarh (in short "the Tribunal") whereby the petition under Section 10 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as "the Act") filed by Lakhinder Singh and Balwinder Singh (respondents No. 3 and 4), Chelas and legal representatives of deceased Mahant Chand Singh, was disposed of on the basis of the compromise arrived at between the parties. The facts necessary for adjudication of the present appeal as narrated therein may be noticed. Dera Baba Bhai Ram Singh was situated at village Kot Fatta, District Bathinda and being a religious place, the working was supervised by Mahants from long time. Earlier, in 1970, Mahant Chand Singh was the supervisor of the Dera and due to his untimely death, Mahant Sukhpal Singh was appointed as his legal representative and next on the seat of the supervisor. In the year 1973, respondents No. 3 and 4 claiming to be the legal representatives of Mahant

Chand Singh filed a petition under Section 10 of the Act before the Tribunal. During the pendency of the said petition, respondents No. 3 and 4 entered into a compromise with respondent No. 2. As per the said compromise, the Dera was declared as notified Sikh Gurudwara and the title of the land measuring 799 kanals 7 marlas belonging to said Gurudwara was decided in favour of respondent No. 2 and respondents No. 3 and 4 were given 118 and 120 kanals of land out of the said land during their lifetime for their survival. Thereafter, respondent No. 2 filed a civil suit under Section 2SA of the Act before the District Judge, Bathinda against respondents No. 3 and 4 for getting the decree for possession of the said land which was decided in favour of respondent No. 2 and symbolic possession thereof was given to respondent No. 2. Respondent No. 2 did not made any application for incorporating the decision dated 19.9.1975 passed by the Tribunal in the revenue record and it was only in the year 2011, respondent No. 2 moved an application to the Deputy Commissioner, Bathinda for incorporating their ownership in the revenue record. The Deputy Commissioner, Bathinda vide order dated 19.7.2011 directed the Tehsildar for incorporation of the ownership of respondent No. 2 in the revenue record. Hence, the present appeal. Since the appeal is barred by time, an application under Section 5 of the Limitation Act, 1963 (for brevity "1963 Act") for condonation of 13412 days" delay has been filed.

2. We have heard learned counsel for the appellant.

3. The primary question that arises for consideration in this appeal is whether there is sufficient cause for condonation of colossal delay of 13412 days in filing the appeal before this Court.

4. Examining the legal position relating to condonation of delay under Section 5 of the 1963 Act, it may be observed that the Supreme Court in *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another*, laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the

applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil."

5. It was further noticed by the Apex Court in R.B. Ramlingam Vs. R.B. Bhvaneswari, as under:-

".....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such."

It was also recorded that:-

"For the aforesaid reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition...."

6. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

7. The Apex Court in Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra) noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that

inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

8. According to the learned counsel for the appellant, the impugned judgment passed by the Tribunal was not in the knowledge of the appellant as before passing of the said judgment, the property in dispute was under the supervision of Mahant Chand Singh and owned by Dera. After his death, respondents No. 3 and 4 without any authority, wrongly claiming them to be successors of Mahant Chand Singh filed a petition under Section 10 of the Act and illegally compromised with respondents No. 3 and 4 and thereafter the land in question and Dera was declared as notified Sikh Gurudwara. Thereafter, respondents No. 3 and 4 filed execution petition for getting the possession of the disputed land and the symbolic possession thereof was handed over to them. However, regarding the ownership in the revenue record, neither any change was ever made nor any application for enumerating the name of SGPC or respondents No. 3 and 4 was made to the revenue authorities. The possession of the land remained with the actual successor of the Dera after Mahant Chand Singh and the land in dispute came under the supervision of the appellant who is currently in possession and is owner of the same as respondents No. 3 and 4 made application to the revenue authorities in the year 2011 (after a gap of 36 years) for incorporating the name of SGPC in the column of ownership. After coming this fact into the notice of the appellant that the land in dispute has been transferred in the name of respondents No. 3 and 4 about 36 years before, he contested the mutation. However, the revenue authorities sanctioned the mutation in favour of respondents No. 3 and 4. The appellant challenged the judgment and decree dated 19.9.1975 and order sanctioning mutation in favour of respondents No. 3 and 4 before this Court by way of CWP which was dismissed as withdrawn with liberty to avail alternative remedy. Hence, the present appeal. Since the appeal was barred by time, an application bearing CM No. 22888-CII of 2013 for condonation of 13412 days" delay has been filed. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal before this Court. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

9. Adverting to the factual matrix in this case, we do not find any merit in the application for condonation of delay. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The Tribunal had decided the matter on 19.9.1975. However, the appeal before this Court was required to be filed within the stipulated period of limitation. But the appellant filed the appeal before this Court after an inordinate delay of 13412 days. The plea of the appellant would not satisfy the test of sufficient cause. The explanation of the appellant is bereft of details of delay caused in filing the appeal. Additionally, the appellant was never a party before the Tribunal and,

therefore, the present appeal at his behest after 39 long years would not be maintainable. Accordingly, application bearing CM No. 22889-CII of 2013 filed under Order 1 Rule 10 of the Code of Civil Procedure is dismissed.

10. In view of the above, we do not find any merit in the application for condonation of 13412 days" delay in filing the appeal. Consequently, the same is hereby dismissed.

11. There was a delay of 345 days in refiling the appeal. An application bearing CM No. 22885-CII of 2013 has been filed for condonation of 345 days" delay in refiling the appeal. Since the application for condonation of 13412 days" delay in filing the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of 345 days" delay in refiling the appeal and the same is also disposed of as such.