

Rampal and Others Vs. Sheer Deen and Others

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Court : Punjab and Haryana

Decided On : Oct-01-2013

Appellant : Rampal and Others

Respondent : Sheer Deen and Others

Judgement :

Civil Revision No.4146 of 2010 (O&M) -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Civil Revision No.4146 of 2010 (O&M) Date of decision : October 01, 2013 Rampal and othersPetitioners versus Sheer Deen and othersRespondents Coram: Hon'ble Mr.Justice L.N.Mittal Present : Mr.Pawan Kumar, Senior Advocate with Mr.Abhishek Sharma, Advocate, for the petitioner Mr.PK Gupta, Advocate, for the respondents L.N.Mittal, J.

(Oral) CM No.16500.CII of 2010 This is application for impleading legal representatives of Shamsheer defendant No.3 since deceased.

It is alleged that defendant No.3 has left behind widow and two sons mentioned in paragraph 2 of the application (petitioners No.3 to 5) as his only legal heirs. The application is accompanied by affidavit.

Accordingly, the application is allowed subject to all just exceptions and petitioners No.3 to 5 are ordered to be brought on Tiwana Dalbir Singh 2013.10.03 16:29 I attest to the accuracy and integrity of this document.

High Court, Chandigarh Civil Revision No.4146 of 2010 (O&M) -1- record as legal representatives of Shamsheer defendant No.3 since deceased for the purpose of this revision petition.

CR No.4146 of 2010 Defendants, who were appellants before the lower appellate court, have filed this revision petition under Article 227 of the Constitution of India assailing order dated 8.3.2010 Annexure P/7 passed by the lower appellate court thereby dismissing application of petitioners for condonation of delay in filing the fiRs.appeal.

Suit filed by respondents/plaintiffs against defendants/petitioners was decreed by the trial court vide judgment and decree dated 31.7.2007.

Defendants preferred fiRs.appeal on 20.2.2008 and filed application Annexure P/3 for condonation of delay in filing fiRs.appeal alleging that the plaintiffs had filed 26 cases in all including the instant case against different persons.

All the said suits were being defended by some common persons chosen by the defendants of all the cases.

Defendants in the instant case were under the impression that fiRs.appeal had already been filed in their case also because their thumb impressions had also been obtained by the aforesaid representatives on the assurance of filing appeal.

However, it turned out that appeal in the instant case had not been filed.

Appeals filed in many other cases were disposed of on assurance of defendants of those cases to pay value of the property (as Tiwana Dalbir Singh 2013.10.03 16:29 I attest to the accuracy and integrity of this document.

High Court, Chandigarh Civil Revision No.4146 of 2010 (O&M) -1- assessed by the Local Commissioner) to the plaintiffs.

The application was opposed by the plaintiffs who controverted the averments made therein.

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

Counsel for the petitioners reiterated the version of the petitioners stated in the application Annexure P/3 as noticed hereinbefore.

On the other hand, counsel for respondents/plaintiffs contended that there is no explanation for the long delay of 203 days in filing the appeal.

It was argued that the lower appellate court has recorded detailed reasons for dismissing the application Annexure P/3 for condonation of the delay.

I have carefully considered the rival contentions.

At the outset it has to be noticed that the delay in filing the appeal was not of 203 days because the appeal was filed 203 days after passing of the judgment of trial court.

Limitation period of 30 days for filing the appeal had to be excluded besides excluding the time spent in obtaining certified copies of judgment and decree of the trial court.

The version pleaded by the petitioners in their application Annexure P/3 may not have stood the test of strict scrutiny by the lower appellate court but prima facie it appears that said version might be correct.

The petitioners are illiterate persons.

When large number of suits having Tiwana Dalbir Singh 2013.10.03 16:29 I attest to the accuracy and integrity of this document.

High Court, Chandigarh Civil Revision No.4146 of 2010 (O&M) -1- common interest are filed, it is not uncommon that they are pursued/defended by some persons only on behalf of all having common interest.

Courts are liberal in condoning delay unless the delay is with malafide intention or oblique motive.

In the instant case, the appellants by filing the appeal late could not gain anything.

On the other hand, the opposite party can be compensated by costs.

The petitioners should be given an opportunity for decision of their fiRs.appeal on merits instead of defeating them on the ground of limitation.

Keeping in view all the circumstances of the case, I am of the opinion that ends of justice would be met if delay in filing the fiRs.appeal is condoned on payment of costs.

Resultantly, the instant revision petition is allowed.

Impugned order Annexure P/7 passed by the lower appellate court is set aside and application Annexure P/3 is allowed and delay in filing the fiRs.appeal is condoned subject to payment of ` 10,000/- as costs precedent.

Appeal file is restored to the files of the lower appellate court.

Parties are directed to appear there on 30.10.2013.

Pending civil miscellaneous applications are disposed of as having been rendered infructuous.

(L.N.Mittal) October 01, 2013 Judge 'dalbir' Tiwana Dalbir Singh 2013.10.03 16:29 I attest to the accuracy and integrity of this document.

High Court, Chandigarh Civil Revision No.4146 of 2010 (O&M) -1- Tiwana Dalbir Singh 2013.10.03 16:29 I attest to the accuracy and integrity of this document.

High Court, Chandigarh

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