

Estate Offr.Haryana Urban Dev.Auth. vs Gopi Chand Atreja on 12 March, 2019

Equivalent citations: AIR 2019 SUPREME COURT 1423, AIR ONLINE 2019 SC 270, (2019) 1 CURCC 436, (2019) 136 ALL LR 739, (2019) 1 CLR 865 (SC), (2019) 1 WLC(SC)CVL 796, (2019) 202 ALLINDCAS 271, (2019) 2 ICC 666, 2019 (2) KCCR SN 106 (SC), (2019) 2 RECCIVR 602, (2019) 3 ANDHLD 170, (2019) 3 CIVLJ 652, 2019 (4) SCC 612, (2019) 5 SCALE 27, AIR 2019 SC (CIV) 3061

Author: Abhay Manohar Sapre

Bench: Dinesh Maheshwari, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.5051-5052 OF 2009

Estate Officer, Haryana Urban
Development Authority & Anr.

...Appellant(s)

VERSUS

Gopi Chand Atreja

...Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. These appeals are directed against the final judgment and orders dated 23.01.2008 and 05.05.2008 passed by the High Court of Punjab & Haryana at Chandigarh in R.S.A. No.4110 of 2007 and R.A.C. No.23□C of 2008 in R.S.A. No.4110 of 2007 respectively whereby the High Court dismissed the second appeal as well as the review application filed by the appellants herein.

Reason:

2. These appeals involve a short point as would be clear from the facts mentioned hereinbelow.

3. The appellants herein is the Haryana Urban Development Authority (hereinafter referred to as “HUDA”). They are the defendants whereas the respondent is the plaintiff in the civil suit out of which these appeals arise.
4. The respondent filed a civil suit being Civil Suit No.305 of 2000 in the Court of Civil Judge(Jr. Division), Karnal against the appellants(HUDA) claiming a decree for declaration with consequential relief of permanent and mandatory injunction in relation to the suit land. The suit was decreed by the Trial Court on contest vide judgment/decreed dated 01.05.2001.
5. The appellants (defendants) felt aggrieved and filed first appeal being Civil Appeal No.92 of 2001 in the Court of Additional District Judge, Karnal. By judgment dated 07.02.2002, the first Appellate Court dismissed the appeal and affirmed the judgment/decreed of the Trial Court.
6. The appellants felt aggrieved and filed second appeal in the High Court of Punjab & Haryana at Chandigarh. Since the appeal filed by the appellant was barred by 1942 days, the appellants filed an application under Section 5 of the Limitation Act and prayed for condoning the delay in filing the second appeal.
7. By impugned order dated 23.01.2008, the High Court rejected the application and declined to condone the delay. The High Court held that the cause pleaded by the appellants for condoning the delay is not a sufficient cause. As a consequence, the second appeal was also dismissed as being barred by limitation.
8. Challenging the said order, the appellants filed a review petition. By order dated 05.02.2008, the High Court also dismissed the review petition.
9. Against the orders dated 23.01.2008 and 05.02.2008, the appellants(defendants) have filed these appeals by way of special leave in this Court.
10. So, the short question, which arises for consideration in these appeals, is whether the High Court was justified in dismissing the appellants’ second appeal on the ground of limitation.
11. In other words, the question arises for consideration in these appeals is whether the High Court was justified in not condoning the delay of 1942 days in filing the second appeal by the appellants(defendants).
12. Heard Mr. Vishwa Pal Singh, learned counsel for the appellants and Mr. Gagan Gupta, learned counsel for the respondent.
13. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

14. In our view, the delay of 1942 days in filing the second appeal in the High Court was rightly not condoned by the High Court for the reasons mentioned below.

15. First, the delay was inordinate; Second it was not properly explained; and Third, the ground alleged in support of application filed under Section 5 of the Limitation Act did not constitute a sufficient cause.

16. The appellant HUDA is a statutory authority created under the Haryana Urban Development Authority Act, 1977. It has its well established legal department to look after the legal cases filed by HUDA and against the HUDA in various Courts. They have panel of lawyers to defend their interest in Courts.

17. It is not in dispute that the appellants had been contesting the civil suit and the first appeal since inception. The appellants were, therefore, fully aware of the adverse orders passed in the first appeal against them. There was, therefore, no justification on their part to keep quiet for such a long time and not to file the appeal within 90 days or/and refile it immediately after curing the defects.

18. If, according to the appellants HUDA, their lawyer did not take timely steps, which resulted in causing delay in its filing/refiling, then, in our view, it cannot be regarded as a sufficient cause within the meaning of Section 5 of the Limitation Act.

19. In our view, it was equally the duty of the appellants (their legal managers) to see that the appeal be filed in time. If the appellants noticed that their lawyer was not taking interest in attending to the brief in question, then they should have immediately engaged some other lawyer to ensure that the appeal be filed in time by another lawyer.

20. In our view, it is a clear case where the appellant HUDA, i.e., their officers, who were in charge of the legal cell failed to discharge their duty assigned to them promptly and with due diligence despite availability of all facilities and infrastructure. In such circumstances, the officers in charge of the case should be made answerable for the lapse on their part and make good the loss suffered by the appellants HUDA.

21. A delay of 1942 days (4 years 6 months), in our view, is wholly inordinate and the cause pleaded for its condonation is equally unexplained by the appellants.

In any case, the explanation given does not constitute a sufficient cause within the meaning of Section 5 of the Limitation Act. It was, therefore, rightly not condoned by the High Court and we concur with the finding of the High Court.

22. The appeals thus fail and are accordingly dismissed.

.....J. [ABHAY MANOHAR SAPRE]J. [DINESH
MAHESHWARI] New Delhi;

March 12, 2019