

IN THE COURT OF LD DISTRICT JUDGE PATIALA

C.M. No _____ / 2024
in
CIVIL APPEAL no _____ / 2024

Bal Krishan Saggi son of Sh. Kharaiti Ram Saggi now deceased
through Legal Representatives: Aman Saggi & anr

...Applicant-Appellant

Versus

Kuldeep Kumar Bansal & Sons & ANR Respondents

**CIVIL MISC. APPLICATION UNDER Section 5 of the
Indian Limitation Act red with SECTION 151 OF CIVIL
PROCEDURE CODE FOR CONDONATION OF DELAY IN
filing the appeal**

Respectfully Showeth:-

1. That the Applicant – appellant is filing the accompanying appeal which is liable to be allowed. The contents of the grounds of appeal may be read as part of this para of the application.
2. That the defendant – father of the appellant, Shri Bal Krishan Saggi expired on 30-9-2023 and as such the sons – appellant now, did not know about any suit pending or filed against his father by the respondents/ plaintiffs.

3. That the appellant had come to know of the said orders-judgment and decree when he came to know on 04-2-2024 from some papers of his father that there was some case filed by the respondent – plaintiff and then he verified same from the counsel. It is thereafter he downloaded the judgment and decree from the official website. Hence present appeal is being filed.
4. That the delay in filing the appeal is due to above reasons which are beyond his control.
5. That serious prejudice would be caused to the applicant / appellants in case the present applicant is not allowed.
6. That no such or similar application is pending between same parties arising out of same cause of action in any court nor any such case is decided by any court in India including Hon'ble Supreme Court of India.

It is therefore most respectfully prayed that;

- (i) the delay in filing the appeal may kindly be condoned in the interest of justice.
- (ii) To pass any other order as may be deemed to be fit and proper in the facts and circumstances of case.

Patiala

Applicant - Petitioner

Dated: 12-2-2024

Through Counsel

ADVOCATE

Counsel for the Applicant-Petitioner

Verification:

Verified that the contents of Para no 1 to 6 of the application above are true and correct to my knowledge derived from the records of the company and contents of Para no 8 are true and correct as per legal advice received and believed to be correct. No part of it false and nothing has been concealed therein.

Chandigarh**Petitioner****Dated: 12-2-2024**

IN THE COURT OF LD DISTRICT JUDGE PATIALA

C.M. No ___/ 2024

in

CIVIL APPEAL no _____ / 2024

Bal Krishan Saggi son of Sh.Kharaiti Ram Saggi now deceased
through Legal Representatives: Aman Saggi & anr

...Applicant-Appellant

Versus

Kuldeep Kumar Bansal & Sons & ANRRespondents

Affidavit of Shri Aman Saggi aged about 51 years
son of Shri Shri Bal Krishan Saggi r/o House No.29,
SBS Colony, Rajpura

I, the above named deponent do hereby solemnly affirm and
declare as under:-

1. That the deponent is filing the accompanying appeal which is liable to be allowed. The contents of the grounds of appeal may be read as part of this para of the application.
2. That the defendant – father of the deponent Shri Bal Krishan Saggi expired on 30-9-2023 and as such the sons – appellant now, did not know about any suit pending or filed against his father by the respondents/ plaintiffs.

3. That the deponent had come to know of the said orders-judgment and decree when he came to know on 04-2-2024 from some papers of his father that there was some case filed by the respondent – plaintiff and then he verified same from the counsel. It is thereafter he downloaded the judgment and decree from the official website. Hence present appeal is being filed.
4. That the delay in filing the appeal is due to above reasons which are beyond his control.
5. That serious prejudice would be caused to the deponent / appellants in case the present applicant is not allowed.
6. That no such or similar application is pending between same parties arising out of same cause of action in any court nor any such case is decided by any court in India including Hon'ble Supreme Court of India.

Patiala

DEPONENT

Dated: 12-2-2024

Verification: Verified that the contents of Para no 1 to 6 of the affidavit above are true and correct to my knowledge. No part of it false and nothing has been concealed therein.

Patiala

DEPONENT

Dated: 12-2-2024

IN THE COURT OF LD DISTRICT JUDGE PATIALA

C.M. No _____ / 2024
in
CIVIL APPEAL no _____ / 2024

Bal Krishan Saggi son of Sh.Kharaiti Ram Saggi now deceased

through Legal Representatives: Aman Saggi & anr

...Applicant-Appellant

Versus

Kuldeep Kumar Bansal & Sons & ANRRespondents

**CIVIL MISC. APPLICATION UNDER Order 41 rule 5 of CPC
for stay of operation of impugned judgment and decree**

Respectfully Showeth:-

1. That the Applicant – appellant is filing the accompanying appeal which is liable to be allowed. The contents of the grounds of appeal may be read as part of this para of the application.
2. That good prima facie case is made out in favour of the applicants/ appellants. Balance of convenience also lies in their favour from the facts disclosed. That the applicants / appellants are in possession of the property in suit.

3. That serious prejudice would be caused to the applicant / appellants in case the present applicant is not allowed.

4. That no such or similar application is pending between same parties arising out of same cause of action in any court nor any such case is decided by any court in India including Hon'ble Supreme Court of India.

It is therefore most respectfully prayed that:

- (iii) the operation of impugned judgment and decree may kindly be stayed in the interest of justice.
- (iv) To pass any other order as may be deemed to be fit and proper in the facts and circumstances of case.

Patiala

Applicant - Petitioner

Dated: 12-2-2024

Through Counsel
ADVOCATE

Counsel for the Applicant-Petitioner

Verification:

Verified that the contents of Para no 1 to 6 of the application above are true and correct to my knowledge derived from the records of the company and contents of Para no 8 are true and correct as per legal advice received and believed to be correct. No part of it false and nothing has been concealed therein.

Chandigarh

Petitioner

Dated: 12-2-2024

IN THE COURT OF LD DISTRICT JUDGE PATIALA

C.M. No ___/2024

in

CIVIL APPEAL no _____ / 2024

Bal Krishan Saggi son of Sh.Kharaiti Ram Saggi now deceased

through Legal Representatives: Aman Saggi & anr

...Applicant-Appellant

Versus

Kuldeep Kumar Bansal & Sons & ANRRespondents

Affidavit of Shri Aman Saggi aged about 51 years

son of Shri Shri Bal Krishan Saggi r/o House No.29,

SBS Colony, Rajpura

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the deponent – appellant is filing the accompanying appeal which is liable to be allowed. The contents of the grounds of appeal may be read as part of this para of the application.
2. That good prima facie case is made out in favour of the deponent / appellants. Balance of convenience also lies in their favour from the

facts disclosed. That the deponent / appellants are in possession of the property in suit.

3. That serious prejudice would be caused to the deponent / appellants in case the present applicant is not allowed.

4. That no such or similar application is pending between same parties arising out of same cause of action in any court nor any such case is decided by any court in India including Hon'ble Supreme Court of India.

Patiala

DEPONENT

Dated: 12-2-2024

Verification: Verified that the contents of Para no 1 to 4 of the affidavit above are true and correct to my knowledge. No part of it false and nothing has been concealed therein.

Patiala

DEPONENT

Dated: 12-2-2024

IN THE COURT OF LD DISTRICT JUDGE PATIALA

CIVIL APPEAL no _____ / 2024

Bal Krishan Saggi son of Sh.Kharaiti Ram Saggi s/o Ralla Ram Saggi
resident of House No.29, SBS Colony, Rajpura, Tehsil Rajpura Distt.
Patiala, now deceased through Legal Representatives:

- (i) Aman Saggi aged 51 years son of late Shri Bal Krishan Saggi,
resident of House No.1058, (2nd Floor), Sector 15-B,
Chandigarh
- (ii) Rajan Saggi aged 55 years, r/o 8885, Mitchell Way Delta BC
Canada V4C7G7, through his GPA Aman Saggi (i) above

.....Appellants/Defendant.

Versus

- 1. Kuldeep Kumar Bansal & Sons, HUF, through its Karta Sh.Kuldeep
Kumar Bansal, # 37-A, Model Gram, Ludhiana. Now at 584/1,
Backside New Court Complex Ludhiana Nursery Chowk, Model Gram,
Ludhiana.
- 2. Sh.Kuldeep Kumar Bansal, Karta, Kuldeep Kumar Bansal & Sons, #
37-A, Model Gram, Ludhiana. Now at 584/1, Backside New Court
Complex, Ludhiana Nursery Chowk, Model Gram, Ludhiana.

.....Respondents/ Plaintiff

Civil Appeal against judgment and decree passed by the court of Shri Hirdejit Singh Id ACJ SD, Rajpura, in Civil Suit No.32 of dated 12.02.2021 C.I.S No. CS-103-2021 decided on: 05.08.2023, decreeing the suit of the respondent / Plaintiffs.

Claim in appeal: to set aside the judgment and decree passed by the court of Shri Hirdejit Singh Id ACJ SD, Rajpura, in Civil Suit No.32 of dated 12.02.2021 C.I.S No. CS-103-2021 decided on: 05.08.2023, decreeing the suit of the respondent / Plaintiffs.

Original Claim : Suit under Section 10 of the Specific Relief Act (As amended up to date) 1963 for possession by way of specific performance of the agreement to sell dated 24.12.2012 executed in between the plaintiffs and the defendant with respect to the property/House measuring 4485sq.Yards, bearing No.29, situated at SBS Colony Rajpura, Distt. Patiala (as comprised in title deed bearing Wasika No.1920 dated 28.09.1984) as shown red in the site plan and bounded as under :North: A.P.Jain Hospital South : Road East : Vacant Plot West : Plot No.28 AND Suit for decree for Permanent Injunction restraining the defendant himself through his agents,

employees, servants, attorneys, authorized persons, associates etc. from alienating, transferring, mortgaging, creating charge and interest with respect to the above said property in dispute in any manner whatsoever and also restraining the defendant from handing over the possession of the above said suit property to someone else except the plaintiffs and also from changing the nature of the suit property, on the basis of oral and documentary evidence.

GROUND OF APPEAL:

1. That the Id court below erred on points of law as well as facts while passing the decree impugned herein. As such it is liable to be set aside.
2. That the court below did not appreciate the evidence produced on record in its true prospective and hence the judgment and decree passed by it, is liable to be set aside.
3. That the Id court below passed the judgment and decree on presumptions and conjectures causing substantial loss / prejudice to the appellant and hence it is liable to be set aside.
4. That the Id court below could not appreciate that the agreement to sell was dated 24-12-2012 and last date fixed was at 30-12-2014, thus suit could have been filed up[to 29-3-2014. Thus judgment and decree are liable to be set aside.
5. That the court below could not appreciate that mere some agreement between the deceased and the respondents, it was not valid and legal in eyes of law, without making Bank as party thereto and without seeking permission from the Bank. Thus, the

- alleged agreement to sell itself was illegal, invalid and non-est in eyes of law. Hence judgment and decree are liable to be set-aside.
6. That the Id court below could not appreciate that non-obtaining of NOC from the Kotak Mahindra Bank, was not sine qua non for executing the sale deed. The obvious reason was that the purchaser would have taken the property with mortgage. Thus one the property was subject matter of agreement to sell, while it was mortgaged, the purchaser had knowledge of same.
7. That the Id court below could not appreciate that M/s Kotak Mohindra Bank was not made party to the suit and hence the suit ought to have been dismissed for want of necessary parties, as the property was mortgaged with the bank.
8. That the court below could not appreciate that on one side it mentioned in para 12 as under,
- “Even after payment of loan amount, the defendant has not executed the sale deed...Apparently the default is on the part of defendant to perform is part of the obligation under the said agreement to sell..”*
- whereas on other side, it did not consider that the suit was beyond limitation, as in view of above, the cause to file suit arose on payment of loan amount i.e. n 13.10.2017.
9. That the Id court below could not appreciate that the suit was grossly time barred, as the No Objection from the Kotak Mahindra Bank, was obtained on 13-10-2017 and as such the suit could have been filed at the most upto 12-10-2020, whereas it was filed on 12-2-2021, much thereafter. Thus the judgment and decree are liable to be set aside.

10. That the court below could not appreciate that the suit was though valued at Rs. 24,50,000/- for purposes of jurisdiction, but the court fee paid in Id court was only Rs. 50/-, as per decree sheet, though the value for the purposes of court fee also had to be same i.e. Rs. 24,50,000/-. Therefore nether the suit was properly valued for purposes of court fee nor the proper court fee was paid on the same. Thus the Hence suit ought to have been dismissed.
11. That the court below could not appreciate that suit was filed seeking possession besides the specific performance and the injunction. Thus the suit was to be valued accordingly for all three reliefs but it was not thus, properly valued and hence suit deserved to be dismissed.
12. That the court below could not appreciate that the respondent /plaintiffs could not prove the agreement to sell as well as other alleged extensions. Hence the judgment and decree are liable to be set aside.
13. That the court below could not appreciate that there were material discrepancies between the statements of both witnesses and as such they could not be believed.

14. That the court below did not discuss the statements of the both witnesses, but just gave a sweeping remark in Para 9 of the judgment that

“...nothing fruitful came out in favour of defendants.”

which thus makes the judgment and decree as having been passed without application of due mind, but just on presumptions and without actual hearing.

PRAYER:

It is therefore most respectfully prayed that:

- (i) Records of the lower court be summoned;
- (ii) the appeal may kindly be allowed and suit of the plaintiff be

dismissed

(iii) Allow costs throughout, in the interest of justice.

(iv) Pass any other order as may be deemed fit and proper in the facts and circumstances of case.

Patiala

Appellant

Dated: 12-2-2024

Through Counsel

IN THE COURT OF LD DISTRICT JUDGE PATIALA

CIVIL APPEAL no _____ / 2024

Bal Krishan Saggi son of Sh.Kharaiti Ram Saggi now deceased

through Legal Representatives: Aman Saggi & anr

...Appellant

Versus

Kuldeep Kumar Bansal & Sons & ANR

....Respondent

Affidavit of Shri Aman Saggi aged about 51
years son of Shri Shri Bal Krishan Saggi r/o
House No.29, SBS Colony, Rajpura,
Tehsil Rajpura Distt. Patiala

I, the above named deponent do hereby solemnly affirm and
declare as under:-

1. That the deponent is filing accompanied civil APPEAL, the contents of which may be read as part of contents of this Para of the affidavit, of the deponent
2. That the deponent has gone through the contents of the civil APPEAL and the contents of same are true and correct and drafted on his instructions correctly.
3. The deponent has put his signatures on same, after admitting

same to be correct.

Patiala

DEPONENT

Dated: 12-2-2024

Verification:

Verified that the contents of Para no 1 to 3 of the affidavit above are true and correct to my knowledge. No part of it false and nothing has been concealed therein.

Patiala

DEPONENT

Dated: 12-2-2024