

# Haryana State Agricultural Marketing Board, Panchkula v. Sube Singh Panwar , 2020 PLRonline 5108

PUNJAB AND HARYANA HIGH COURT

ALKA SARIN, J.

**Haryana State Agricultural Marketing Board, Panchkula v. Sube Singh Panwar**

CR No.1703 of 2020(O&M)

12.03.2020

**CPC S. 100 - Once a decree sheet has been prepared, the defendant-petitioners cannot merely challenge the order dismissing their application for condonation of delay by filing a revision petition when they have a remedy of filing a second appeal against the decree sheet drawn up - Revision petition is not maintainable as the lower Appellate Court has confirmed the decision of the Trial Court on merits and this amounts to the first appeal being heard and finally decided on merits - A decree sheet has been drawn up by the lower Appellate Court - The defendant-petitioners have chosen not to challenge the decree passed by the lower Appellate Court though this remedy was available to them under Section 100 CPC.**

Cases Referred:

1. Shyam Sunder Sarma vs. Pannalal Jaiswal [(2005) 1 SCC 436]

Mr. Padamkant Dwivedi, For the Appellant.

JUDGMENT :

**ALKA SARIN, J.** - The defendant-petitioners have filed this revision petition to challenge the order dated 03.09.2019 (Annexure P-4) whereby the lower Appellate Court has dismissed their application for condonation of delay in filing the first appeal. Consequently, the first appeal was also dismissed.

2. The plaintiff-respondent filed a suit for declaration and mandatory injunction pleading that he belonged to a scheduled caste and joined the service of MC Fatehabad on 07.03.1978 as a Peon. He was promoted as Storekeeper/Auction Recorder vide order dated 15.06.1989 and that he joined as Storekeeper on 23.06.1989. It was further pleaded that the date of promotion of the plaintiff-respondent as Storekeeper was preponed from 15.06.1989 to 01.04.1982, at par with promotion given to other juniors. However, the arrears of pay and allowances against the post were paid to him from 23.06.1989 onwards. The defendant-petitioners took a decision in a meeting held on 11.08.2014 whereby Auction

Recorders promoted before 04.01.2008 were exempted from passing type-test and, as such, the plaintiff-respondent became entitled for arrears of promotional post of Auction Recorder from 01.04.1982 though the pay of the plaintiff-respondent was fixed for the post of Auction Recorder with a rider that he would be paid arrears from 23.06.1989. The plaintiff-respondent was promoted as Mandi Supervisor on 10.09.2002. His date of promotion was proposed from 10.09.2002 to 06.02.1996, vide order dated 20.02.2009, with a condition that he would be entitled to arrears of pay from actual date of promotion i.e. 13.09.2002. The plaintiff-respondent was promoted as Accountant with effect from 06.08.2002 which he joined on 18.02.2010, from which date he was paid the arrears. Vide order dated 02.04.2010 the plaintiff-respondent was further promoted as Assistant Secretary with effect from 21.08.2007 with a rider that he would not be entitled to salary of the post till he joined. The plaintiff-respondent alleged that he ought to be treated at par with one Jai Bhagwan who was also given promotion as Accountant. The plaintiff-respondent claimed in his suit that his pay had not been properly fixed and that the same should be re-fixed from the stage of grant of retrospective promotions and that his arrears have been wrongly denied on the basis of certain instructions which instructions in fact stood superseded and that similar relief was granted to Rajbir Singh Dahiya, Ramesh Kumar, Rajender Kumar Sharma, Gurcharan Singh, Kedar Singh, etc. Hence the suit.

3. The defendant-appellants contested the suit which was partly decreed by the Trial Court vide judgment and decree dated 14.03.2017. The defendant-appellants preferred a first appeal which was time-barred. An application for condonation of delay in filing the first appeal was also filed. The lower Appellate Court vide the impugned order dated 03.09.2019 dismissed the application for condonation of delay in filing the first appeal and, consequently, the first appeal was also dismissed. Hence, this revision petition by the defendant-petitioners.

4. A perusal of the impugned order passed by the lower Appellate Court reveals that it is stated therein that "Since, the application for condonation of delay is dismissed, consequently, the appeal is obviously barred by time and is hereby dismissed. Decree sheet be prepared accordingly. Appeal file be consigned to record room". Once a decree sheet has been prepared, the defendant-petitioners cannot merely challenge the order dismissing their application for condonation of delay by filing a revision petition when they have a remedy of filing a second appeal against the decree sheet drawn up. In the matter of *Shyam Sunder Sarma vs. Pannalal Jaiswal* [(2005) 1 SCC 436], the Supreme Court held as follows:

*"9.1. In Sheodan Singh v. Daryao Kunwar rendered by four learned Judges of this Court, one of the questions that arose was whether the dismissal of an appeal from a decree on the ground that the appeal was barred by limitation was a decision in the appeal. This Court held: (SCR pp. 308 H-309 B)*

*"We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits itself amounts to the appeal being heard and finally*

*decided on the merits whatever may be the ground for dismissal of the appeal.”*

5. In view of the settled law, this revision petition is not maintainable as the lower Appellate Court has confirmed the decision of the Trial Court on merits and this amounts to the first appeal being heard and finally decided on merits. A decree sheet has been drawn up by the lower Appellate Court. The defendant-petitioners have chosen not to challenge the decree passed by the lower Appellate Court though this remedy was available to them under Section 100 CPC.

6. In view of the reasons recorded above, I do not deem it appropriate to delve into the merits of the case as this revision petition is itself held to be not maintainable.

7. Revision petition is dismissed.