

R. RAJESH KUMAR JAIN v. KRISHAN BAHADUR SUNAR @ KRISHNA BAHADUR SUNAR , (2022-2)206 PLR 102 , 2022 PLRonline 1361

[punjab and haryana](#) HIGH COURT

Before: Mr. Justice H.S. Madaan.

DR. RAJESH KUMAR JAIN - Petitioner,

Versus

KRISHAN BAHADUR SUNAR @ KRISHNA BAHADUR SUNAR and another - Respondents.

CR-1728-2021(O&M)

(i) [limitation act](#), 1963 (36 of 1963) Section 9 - Clearly provides that where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it - Therefore, the application of appellant that period spent by him in prosecuting application for [review](#) deducted for the period of calculating [limitation](#) should be deducted is not acceptable. [Para 8]

(ii) Civil Procedure Code, 1908 (V of 1908) Order 47 - Limitation Act, 1963 (36 of 1963) Section 9 - Once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it - Therefore, the application of appellant that period spent by him in prosecuting application for review i.e. from 13.12.2017 to 29.5.2019 be deducted for the period of calculating limitation should be deducted is not acceptable - Therefore, the appeal filed was clearly time barred. [Para 8]

Cases referred to:-

1. 2019(6) SCC 387, *Bhivchandra Shankar More v. Balu Gangaram More*.
2. 2008 CRI L.J. 4355, *NCT of Delhi v. Ahmed Jaan*.
3. 245(2017) Delhi Law Times 212, *T.Venkat Ram Reddy v. Blue Chip Capital Services Pvt. Ltd.*
4. 177(2011) Delhi Law Times 632, *North Delhi Power Ltd. v. AAR ESS Industries*

Dr.R.K. Jain @ Rajesh Kumar Jain - petitioner in person.

H.S. Madaan, J. (ORAL) - (13th December, 2021) - Case taken up through video conferencing.

1. Briefly stated, facts of the case are that plaintiff Dr.R.K. Jain @ Rajesh Kumar Jain had brought a suit for recovery of Rs.3,52,230/- with interest against defendant Sh.Kishan Bahadur Sunar @ Krishna Bahadur Sunar and his wife Smt.Kamla Sunar; that Civil Suit No.79 of 30.8.2017 was partly decreed for recovery of Rs.1 lakh with interest @ 9% per annum w.e.f. 31.8.2014 till payment vide [judgment](#) and decree dated 20.11.2017 passed by Additional Civil Judge (Sr.Divn.), Jind.

2. Feeling aggrieved, the plaintiff had filed an application under Order 47 Rule 1 [cpc](#) read with Section 114 and 151 [CPC](#) for review of judgment and decree dated 20.11.2017, which was however dismissed vide order dated 29.5.2019.

3. Feeling dissatisfied, the plaintiff had filed a civil appeal against the judgment and decree dated 20.11.2017 passed by the trial Court as well as order dated 29.5.2019 dismissing his application for review.

4. The appeal filed before District Judge, Jind was assigned to Additional District Judge, Jind, who gave notice of the same to defendants/respondents, who put in appearance and offered a contest. Along with the civil appeal, the plaintiff/appellant had moved an application for condonation of delay contending that after passing of the decree by the trial Court since he had been granted lesser interest than agreed one, he had moved an application for amendment, which was dismissed on 29.5.2019; that due to summer vacations, the Civil Courts remained closed w.e.f. 1.6.2019 to 30.6.2019; thereafter, the appellant filed an application for obtaining certified copy of order dated 29.5.2019 on 3.7.2019, which was supplied to him on 8.7.2019; thereafter he filed an appeal. Therefore, the delay in [filing](#) of the appeal be condoned.

5. Learned Additional District Judge, Jind had dismissed the appeal vide impugned order dated 19.7.2021. For ready reference, the operative part of the order is being reproduced as under:

7. The arguments advanced by appellant/plaintiff/applicant and the learned counsel for the respondent are duly considered apart from perusing the record. First of all in the present matter, it is to be considered that whether the limitation period would start from 20.11.2017 when the main judgment and decree was passed and against which the appeal has been filed or it would start from 29.5.2019 when the review petition was dismissed by the Court of Addl. Civil Judge (Sr.Divn.), Jind. The appellant/plaintiff/applicant is alleging that it should be start from 29.5.2019. In this regard, it is observed that to start the period of limitation from 29.5.2019 it is to be seen that whether the appeal against the review petition is maintainable or not. Order XLVIII Rule 1(w) provides that an appeal can be filed against the order under Rule 4 of Order XLVII granting an application for review. Needless to say, it means the appeal against an order on review petition can be filed only if review petition is allowed, if review petition is dismissed then no appeal can be filed. Admittedly, in the present matter, the review petition has been dismissed. Therefore, no appeal lies against the order dated 29.5.2019 and limitation period is to be calculated from the judgment and decree dated 29.11.2017. From that date, the present appeal is time barred. Therefore, it is liable to be dismissed being time barred. Apart from that, if the review petition has been filed and party has not exercised the right to file the appeal in that situation also, the said party cannot file an appeal after the decision of review petition if it is dismissed. Order XLVII Rule 1(a) provides that anybody considering himself aggrieved by a decree of order from which an appeal is allowed but from which no appeal has been preferred can file a review petition. In this way, it is clearly made out that if in places of appeal review petition is filed then appeal cannot be preferred. On this ground also, the appeal is not maintainable. Hence, neither the appeal is maintainable nor it is filed within the period of limitation, therefore, it is absolutely time barred and it is liable to be dismissed being time barred. The application for condonation of delay is liable to be dismissed.

6. Still feeling dissatisfied, the appellant has come to this Court by way of filing the present [revision](#) petition.

7. I have heard the appellant in person besides going through the record and I find that the revision petition is absolutely without any merit.

8. The civil suit filed by the petitioner/plaintiff having been decreed partly on 20.11.2017 and if he was not satisfied with such judgment and decree passed and wanted to challenge the same by way of filing appeal, the limitation for doing so started immediately after passing of the judgment and decree passed by the trial Court. The limitation for filing appeal against the judgment and decree passed by the trial Court to First Appellate Court is 30 days from the date of decree or order in terms of Article 116 of the Limitation Act, 1963. The

limitation could not possibly be brought to a standstill by moving application for review, which was filed on 13.12.2017. Section 9 of the Limitation Act, 1963 clearly provides that where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. Therefore, the application of appellant that period spent by him in prosecuting application for review i.e. from 13.12.2017 to 29.5.2019 be deducted for the period of calculating limitation should be deducted is not acceptable. Therefore, the appeal filed was clearly time barred.

9. The appeal in this case was filed more than one year and seven months. The explanation furnished is least convincing. It was not option of the plaintiff to file application for review after about 23 days of passing the judgment and decree by the trial Court and then start claiming that with filing of such application by him, the limitation be taken as stopped till his such application was decided and only thereafter it be taken to have been started again. Learned Additional District Judge, Jind was justified in coming to the conclusion that appeal is time barred.

10. Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

11. Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Here the petition has not been able to give any plausible or justifiable reason for condonation of delay in this case.

12. Therefore, on the ground of limitation alone, the appeal was rightly rejected. As regards the other reason given that since plaintiff had availed of remedy of filing application for review, the appeal was not maintainable. The interpretation given by learned Additional District Judge, Jind under the circumstances cannot be faulted because in terms of Order 47, an application for review can be entertained if a person considers himself aggrieved by a decree of order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order for which no appeal is allowed, which means that a person cannot take recourse to multiple remedies. Once the plaintiff after passing of judgment and decree by the trial Court had opted to get his grievances redressed by moving an application for review and the same having been disposed of after a contest on merits, the plaintiff/appellant could not reagitate the matter by way of filing appeal which was hopelessly time barred.

13. The judgments referred to by the petitioner are not applicable due to different facts and circumstances and the context in which such observations had been made. The citation *Bhivchandra Shankar More v. Balu Gangaram More & Ors.*,¹ 2019(6) SCC 387 dealt with a situation, where an application for setting aside ex-parte decree was dismissed. It was observed that even then regular appeal can still be filed to challenge ex-parte decree on merits. Here the situation is quite different. The plaintiff never opted to file appeal at the first instance moving application for review which when was dismissed then filing the appeal which was time barred challenging the judgment and decree passed by the trial Court and order passed on review application by the said Court.

As regards the next authority State (*NCT of Delhi v. Ahmed Jaan*,² 2008 CRI.L.J. 4355 by the Apex Court, this judgment is not helpful to the petitioner in any manner. Firstly it was with regard to filing revision petition under Code of Criminal Procedure, whereas we are dealing with a matter under Code of Civil Procedure. The petitioner has failed to furnish any plausible and justifiable reason making out a case for condonation of delay. Therefore, this judgment is not helpful.

The next judgment *T.Venkat Ram Reddy v. Blue Chip Capital Services Pvt. Ltd. & Anr.*,³ 245(2017) Delhi Law Times 212 dealt with eventuality with regard to exclusion of period of limitation under Section 14 of the

Limitation Act, 1963. It provides that the ingredients required to be satisfied before invoking the Section 14 of the Limitation Act are due diligence and good faith. Here due diligence on the part of the petitioner is not established. He instead of filing appeal before District Judge, Jind within period of limitation, rather opted to avail of remedy of review, which took considerable time for completion and when he was unsuccessful there, then he filed appeal. Therefore, it cannot be said that he had exercised due diligence in the matter.

For these very reason mentioned above, the next judgment i.e. *North Delhi Power Ltd. v. AAR ESS Industries*,⁴ 177(2011) Delhi Law Times 632 does not help the case of the petitioner.

14. In the present case, I do not find any such illegality or infirmity with the impugned order passed by the Court below much less apparent on the face of it. I do not see any reason to upset the impugned order.

15. Thus, finding no merit in the civil revision petition, the same stands dismissed.

R.M.S.

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Petition dismissed.

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