

(22) No injunction can be granted in favour of a trespasser against a true owner. So, in view of above discussion, the second question of law formulated above stand determined in favour of Karambir Singh and Rajbir Singh, defendants/appellants in Regular Second Appeal No. 2839 of 2001 and against plaintiff/respondent Nirbhai Singh.

(23) Consequently, Regular Second Appeal No.2839 of 2001 preferred by Karambir Singh and Rajbir Singh stands accepted. The judgments of both the Courts below stand set aside and the suit of the plaintiff for permanent injunction and declaration stand dismissed with costs throughout.

(24) A copy of this judgment be placed on the file of Regular Second Appeal No. 2839 of 2001 titled **Karambir Singh and another Versus Nirbhai Singh**.

(25) Decree sheets be prepared and the files of Courts below be returned after due compliance.

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**R.N.R.**

*Before Permod Kohli, J*

**STATE OF HARYANA & OTHERS .. Appellants**

**versus**

**DAL CHAND & OTHERS .. Respondents**

C.M. No. 5161-C of 2007

and RSA No. 1787 of 2007

11th March, 2008

*Code of Civil Procedure, 1908—O. XXVII Rls. 1 and 2—Limitation Act, 1963-S.5-Delay in filing appeal-Application for condonation of delay-Totally vague, self-contradictory & disclosing no sufficient cause-Appeal and application by a Naib Tehsildar-Naib-Tehsildar has no authority under law and not even a party to litigation-Incompetent to file application and appeal-Application for condonation of delay dismissed with costs of Rs.1 lac-As a consequence of dismissal of application, appeal also dismissed.*

*Held* that the State appeals are being filed by Naib Tehsildars and not by any senior officer of the Government. Such an appeal is otherwise incompetent. State can only be represented by a competent officer who is duly authorized under rules of business of the Government or Order XXVII Rules 1 and 2 of the Code of the Civil Procedure or any other rules or an officer who is a party to the litigation. In the present case, the appeal has been preferred and this application is made by a Naib Tehsildar with whom there is no authority under law and who is not even a party to the litigation. This application besides being incompetent do not disclose any sufficient cause. I am constrained to dismiss this application with costs which is quantified at Rs. one lac to be paid/recovered from the officers who are found to be responsible for dereliction of duty.

(Para 5)

Rajeev Kawatra, Sr. D.A.G. Haryana, *for the applicant-appellants.*

**PERMOD KOHLI, J (ORAL):**

(1) Heard the learned Senior D.A.G., Haryana at length.

(2) Delay of 756 days in filing the appeal is sought to be condoned through the medium of this application. When the matter came up for consideration on 10th September, 2007 learned counsel for the applicant-appellants sought some time to inform the Court regarding the action taken against the officials/officers responsible for late filing of the appeal. Thereafter, the applicant-appellants have placed on record letter No.215/Surplus dated 15th January, 2008 written by the Deputy Commissioner, Faridabad, to the Advocate General, Haryana, Chandigarh, accompanied with the order dated 11th January, 2008 of the Collector, Faridabad. It has been communicated that Ram Maher, the then Naib Tehsildar (surplus), Faridabad, Dr. Naresh Kumar, the then Naib Tehsildar (Surplus), Jeewan Dass the then Patwari and Deep Chand Patwari-Surplus, were liable for causing the delay of 756 days in filing the appeal. Jeewan Dass and Deep Chand, Patwaris, have been placed under suspension vide order dated 11th January, 2008. The Commissioner, Gurgaon Division, Gurgaon, who is competent authority,

has been requested to take disciplinary proceedings against Ram Maher and Dr. Naresh Kumar, the then Naib Tehsildars (Surplus).

(3) It is surprising that Dr. Naresh Kumar, Naib Tehsildar (Surplus) is present in Court and is still overlooking the present appeal. He is one of those officers who has been pinned down for dereliction of duty, but still deputed to follow the case.

(4) As set up in the application, it is the case of the applicant-appellants that the judgment impugned was passed on 31st May, 2005. Necessary application for obtaining certified copy was filed only on 25th August, 2005, i.e. after about three months and the copy of the judgment was made available on 9th September, 2005. Naresh Kumar, the then Naib Tehsildar (Surplus) Faridabad, and Deep Chand, Patwari (Surplus), Faridabad, collected the brief of the case and certified copies of the judgment and decree, but inadvertently, the brief of the case and certified copies of the judgment could not be submitted to the office of the Advocate General, Haryana, Chandigarh, because of the fact that the post of Naib Tehsildar (Surplus) was vacant. It is stated that Naib Tehsildar (Surplus), Faridabad, has joined this post on transfer on 3rd July, 2006. This statement is self-contradictory. On the one hand, it is stated that Naresh Kumar, the then Naib Tehsildar (Surplus) Faridabad and Deep Chand, Patwari, collected the certified copies of the judgment and decree and the brief and on the other hand, it is stated that the post of the Naib Tehsildar (Surplus) was lying vacant and the same was filled up only on 3rd July, 2006. It was further mentioned that it was only on 19th March, 2007 that Deep Chand, Patwari (Surplus), Faridabad, was assigned the duty to contact Advocate General, Haryana at Chandigarh. No date is given as to when Deep Chand, Patwari, contacted the Advocate General, Haryana, at Chandigarh and when the Advocate General, Haryana, asked to supply the copies of the judgment of the trial Court. It is further mentioned that due to the mixing of the file with other files, the appeal could not be filed in time. The averments made in the application are totally hotch-potch and do not make any head or tail of the story.

(5) Learned Senior Deputy Advocate General, Haryana, submits that Naib Tehsildar (Surplus), Faridabad, is competent authority to file

the appeal in this Court. It is beyond imagination that an officer of the rank of Naib Tehsildar (Surplus) is competent to file the appeal on behalf of the State. The action taken seems to be totally an eye wash. No senior officer, who was/is otherwise responsible to file the appeal, has been made responsible. As a matter of fact, even the suspension of some of the officials of the rank of Patwaris has been made only to convey to the Court that some action is being taken against the erring officers. The State property is being given away either by connivance or callousness on the part of the officers. This depicts sorry state of affairs. The averments made in the application are totally vague, self contradictory and do not inspire any confidence. The application is supported by an affidavit of one Giani Ram, Naib Tehsildar (Surplus) office of the Deputy Commissioner, Faridabad. It is relevant to observe here that the State appeals are being filed by Naib Tehsildars and not by any senior officer of the Government. Such an appeal is otherwise incompetent. State can only be represented by a competent officer who is duly authorised under rules of business of the Government or Order XXVII Rules 1 and 2 of the Code of Civil Procedure or any other rules or an officer who is a party to the litigation. In the present case the appeal has been preferred and this application is made by a Naib Tehsildar with whom there is no authority under law and who is not even a party to the litigation. This application besides being incompetent, do not disclose any sufficient cause. I am constrained to dismiss this application with costs which is quantified at Rs. one lac, to be paid/recovered from the officers who are found to be responsible for de-reliction of duty.

(6) The Chief Secretary, Government of Haryana, will initiate enquiry in this regard and depute a senior officer for conducting enquiry. After identifying the person (s) he will also ensure that action is initiated against the officers/officials who may be found responsible for de-reliction of duty and causing delay in filing the present appeal. The Chief Secretary will also ensure that in future appeals are filed on behalf of State by the competent official/person of the State and not by any incompetent officer.

(7) Till the amount of cost is recovered from the erring/responsible officials/officers, the State of Haryana will deposit the same with the Haryana State Legal Services Authority, Chandigarh, within a period of four weeks.

(8) As a consequence of the dismissal of the application for condonation of delay in filing the appeal, the appeal also stands dismissed.

(9) A copy of this order be forwarded immediately to the Chief Secretary, Government of Haryana, for compliance. The compliance report shall be filed before the Registrar (Judicial) of this Court with a period of four months.

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R.N.R.

*Before Mehtab S. Gill and Augustine George Masih, JJ*

**RAM GOPAL,—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

C.W.P. No. 7744 of 2007

30th October, 2008

*Constitution of India, 1950 — Art 226—Haryana Aided School (Security of Service) Act, 1971—Haryana Aided School (Security of Service) Rules, 1974—Haryana School Education Act, 1995—Haryana School Education Rules, 2003—1971 Act & 1974 Rules repealed—Termination of services of S. S. Master of Govt. aided private school—Termination after coming into force of 1995 Act and 2003 Rules— Management of School failing to seek approval of department as required under Rule 87 of 2003 Rules—Order passed by Director quashed being not sustainable in law.*

*Held*, that the stand of the Management with regard to the applicability of the earlier Act and Rules is understandable as they want