

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1515 of 2013 (O&M)
Date of decision: 10.03.2015

Sewa Singh Tiwana

... Petitioner

versus

Gurneet Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aashish Aggarwal, Senior Advocate with
Mr. J.S. Brar, Advocate for the petitioner.

Mr. K.S. Boparai, Advocate,
for respondent Nos. 1, 2, 5, 6, 9 and 10.

K.Kannan, J.

As per office report, notice could not be issued respondent Nos. 3, 4, 7 and 8 as foreign ADs were not supplied. Counsel for the petitioner submitted that they were ex-parte before the Lower Appellate Court and so service of respondent Nos. 3, 4, 7 and 8 could be dispensed with.

Ordered accordingly.

The petition for restoration of the suit which was dismissed in default was again dismissed by the trial Court on the ground that the counsel who had moved the application failed to appear to prosecute the same. This reasoning was affirmed in the Appellate Court. In revision the senior counsel points out that there existed a power of attorney by the plaintiff given directly in favour of the counsel who had drafted and filed the petition for restoration. I find the cause of dismissal without entering on the merits of the application of restoration cannot be supported. The counsel for the respondents states

that though two courts below have not adverted to the correct reasons that could have been applied for dismissal, this court may examine whether dismissal was correct or not. The counsel would argue that on the day when the suit was brought for hearing and dismissed in default, there was already a direction from the High Court allowing for an opportunity to be given to the plaintiff to tender evidence on payment of costs of ₹ 10,000/-. Admittedly, the costs of ₹ 10,000/- was not paid. Hence, the court was justified in dismissing the suit. The justification for dismissal must be so stated and it cannot be buttressed by arguments of counsel. What I am examining now is again the justification by the authority for dismissing the restoration application. If the restoration application is dismissed on the ground that is untenable, the order must go. There has been no consideration of any of the circumstances mentioned in the application for restoration of the suit. That exercise will not be done by me. It should be done before the Court where the application shall be taken up for hearing and disposed of in accordance with law.

The impugned order is set aside and the matter is remitted to the trial Court for consideration of the application for restoration on merits in accordance with law.

The civil revision petition is allowed on above terms.

(K.KANNAN)
JUDGE

10.03.2015

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