

247 In the High Court of Punjab and Haryana at Chandigarh

CR-182-2015

Date of Decision: 07.04.2015

Gurcharan Singh

.....Petitioner

Versus

Sukhdev Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. H.K.Brinda, Advocate
for the petitioner

...

SABINA, J.

Petitioner has filed this petition challenging the orders dated 30.10.2013 and 25.09.2014.

I have heard learned counsel for the petitioner and gone through the record available on the file carefully.

The petitioner had filed suit for possession by way of partition. Suit filed by the petitioner was dismissed in default on 22.08.2001. Thereafter, petitioner moved an application for restoration of the suit and the said application was also dismissed in default on 23.10.2003. Petitioner filed an application for restoration of the said application on 11.11.2004. The said application was dismissed by the trial Court vide impugned order dated 30.10.2013. The order passed by the trial Court was upheld in appeal filed by the petitioner vide order dated 25.09.2014.

The trial Court while dismissing the application has held as

under :-

“In the said backdrop, this court is of the considered opinion that it is only on account of the fact that appropriate interim relief has not been granted in favour of the applicant that he has intentionally started absenting from the proceedings of the case so filed by him that has been dismissed in the year 2001. For the said reasons which he has failed to lead any evidence on his application for restoration of the suit, same has again been dismissed on dated 23.10.2003. Even the contempt application has further been dismissed as per judgment Ex.R1. Even during the course of the evidence the deposition of applicant for establishing sufficient grounds for his non appearance on the date fixed in the application is contradictory as on one hand he has stated that he was not feeling well and recorded the fact in a diary kept by him. When he was granted opportunity he failed to produce the same and stated that he has not appeared before the court on the date when the application was fixed. However, during his cross-examination itself he has admitted to be present in the court on the said date. In the said circumstances, this court is of the considered opinion that applicant has failed to establish the existence of sufficient reasonable grounds for restoration of his application for restoration as has been dismissed in default vide order dated 23.10.2003. Accordingly, this issue stands decided against the applicant and in favour of the respondents.”

The reasons given by the trial Court while dismissing the application moved by the petitioner for restoration of the application for restoration of the suit are sound reasons. Petitioner had failed to

prove on record that he could not appear before the trial Court on account of his ill health or on account of the fact that he had noted down a wrong date. Rather, it was held by the trial Court that the petitioner had intentionally absented before the Court as he was not granted appropriate interim relief.

In the facts and circumstances of the case, the absence of the petitioner cannot be said to be bona fide or unintentional.

Hence no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

April 07, 2015
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