

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1702 of 2014
Date of decision: 28.09.2015

Premwati and others

... Petitioners

Versus

Subhash Chander and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Shilak Ram Hooda, Advocate for the petitioners.
Mr. Ravinder Hooda, Advocate for respondent No.1.
None for respondents No.2 & 3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 16.02.2009, rendered by Additional Civil Judge (Sr. Divn.), Rohtak, the application moved by the petitioners/plaintiffs for setting aside the order dated 08.12.2005 and for restoration of the suit, was since dismissed. As even the appeal against the said order failed and was dismissed by the first appellate court vide order dated 20.11.2013, petitioners-plaintiffs are before this court.

In an application moved by the petitioners, it was maintained that in a suit filed by the petitioners, that was listed before Civil Judge (Jr. Divn.), Rohtak, they continued to appear with their counsel till 08.06.2005. The matter was adjourned to 08.12.2005, for recording plaintiffs' evidence, but

as plaintiff-Premwati suffered from Anemia, she could not appear before the court on the date fixed. However, the petitioner-Premwati duly informed her counsel about her illness. And, she was assured by her counsel that he would get the case adjourned. After two months, she again telephonically asked her counsel of the date fixed in the matter and she was told that the matter was listed for 15.02.2006. As she continued to be ill, she again informed her counsel on 14.02.2006 that she would not be able to appear even on 15.02.2006, as her condition was serious. She was assured that as and when her presence would be required or is necessary, she would be intimated. But, it was only on 15.12.2007, when she came to see her counsel and enquired about the fate of her suit, she was told that the same had been dismissed in default. As apparently, petitioner-Premwati was not at fault for her non-appearance, thus, the application.

In response, it was pleaded, inter alia, that the contents of the application were wholly concocted and there exists no ground to restore the suit. The application was barred by time. Accordingly, the respondents prayed for dismissal of the application.

On a due and comprehensive consideration of the matter in issue and the material on record, both the courts concurrently concluded that the application moved by the petitioners was wholly misconceived. And there was hardly

any ground to restore the suit. In any case, the application was hopelessly barred by time. The conclusion arrived by the trial court in this regard, and affirmed by the appellate court, reads as thus:

“After hearing the rival contents of both the counsel for the parties and perusal of the record it has been observed by this Court that suit of the plaintiff was dismissed in default on 08.12.2005. The present application has been filed by the applicant on 15.01.2008 meaning thereby that the present application has been filed after a period of two years. As per the law of limitation, only one month time is prescribed for filing of the application for restoration of the suit. The applicant was to file an application under Section 5 of the Limitation Act for condonation of delay but no application has been filed by the applicant, therefore, the present application is hopelessly time barred. The ground taken up for restoration of the suit mentioned by the applicant is not digestable that she asked from her counsel about the dates as mentioned above. It is settled law that law helps those who are vigilant about their rights and duties. In these circumstances, I do not find any ground to restore the present case. Consequently, the application in hand is hereby dismissed.”

I have heard learned counsel for the parties and perused the paper book.

Learned counsel for the petitioners simply seeks to reiterate the submissions that were advanced before the

courts below. All what he has urged is that the petitioner-Premwati acquired knowledge qua dismissal of her suit on 15.12.2007. And, thus, the period of limitation, to move an application for restoration of the suit, would commence from the date of knowledge. Therefore, there was hardly any necessity to move any application for condonation of delay.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the petition in hand is wholly devoid of merit and is thus liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, plaintiff-Premwati continued to appear before the trial court with her counsel till 08.06.2005. She was conscious that her suit was at a crucial stage as evidence of the plaintiffs was to be recorded on 08.12.2005. She purportedly fell ill and could not appear before the court on the date fixed. Her counsel was apprised of her ailment and difficulty to appear on 08.12.2005. In a normal parlance, the petitioner would have contacted her counsel at the earliest to ascertain the fate of her suit or the next date fixed in the matter. But her own case is that she did not contact her counsel for a period of two months. Again, when she telephonically asked her counsel about the next date of hearing, she was told that the matter was listed for 15.02.2006. Petitioner-Premwati again alleged to have expressed her helplessness to attend the hearing even on

15.02.2006, as she was seriously ill. However, nothing was brought on record, least any cogent or credible evidence, to substantiate any such plea. Concededly, from 14.02.2006 till 15.12.2007 i.e. for a period of almost two years, petitioners never contacted their counsel to ascertain the fate of their suit. On 15.12.2007, petitioner-Premwati only is purported to have met the counsel, when she acquired knowledge as regards the dismissal of her suit in default on 08.12.2005. Concededly, nothing was brought on record to show as to what action was resorted to by the petitioners against the counsel or if any complaint was made against him to the Bar Council. That being so, it is highly incredible that the petitioners were not in the knowledge of the proceedings and the order dated 08.12.2005. Ex facie, the explanation rendered by the petitioners was palpably false. Application moved by the petitioners for restoration of the suit after a period of two years was, thus, barred by time. In fact, the application moved by the petitioners on 15.01.2008, for restoration of the suit, was clearly an afterthought. Concededly, the period of limitation to move any such application was 30 days and the application moved by the petitioners was not accompanied by any application under Section 5 of the Limitation Act. Not just that, the trial court dismissed the application of the petitioners on 16.02.2009, petitioners preferred an appeal against the said order on 16.12.2011, after almost two years of the

passing of the said order. And thus, there was a gross, inordinate and unexplainable delay even in filing the appeal. So much so, nothing was indicated in the application for condonation of delay that was moved along with the appeal, to justify the delay. Even the exact number of days, the appeal was barred by, were not indicated in the application, least a sufficient cause. That being so, it was rightly concluded by the courts below that the petitioners have been extremely negligent and remiss to pursue their cause.

In the wake of the position as set out above, no interference is warranted in exercise of revisional jurisdiction, under Article 227 of the Constitution of India. Petition lacks both i.e. merit as also the bonafides and the same being devoid of merit is accordingly dismissed.

September 28, 2015
Rajan

(Arun Palli)
Judge