

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Revision No. 2081 of 2015 (O&M)  
Date of decision: 18.5.2015

**Darshan Singh (deceased) through his legal representative**  
**.. Petitioner**

**v.**

**Harjinder Singh and others**

**.. Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sarju Puri, Advocate for the petitioner.

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Rajesh Bindal J.

Challenge in the present petition is to the order dated 19.9.2014, passed by the court below, whereby the application filed by the petitioner for restoration of the application filed under Order 9 Rule 13 CPC, which was dismissed in default on 16.12.2008, was dismissed.

Briefly, the pleaded facts are that respondent No. 1 filed a suit on 28.5.1998 for specific performance of agreement to sell against Darshan Singh (deceased). Ex-parte decree was passed in favour of respondent No. 1 on 10.4.2001. Darshan Singh died on 4.1.2002. Execution was filed by respondent No. 1 on 18.11.2002. Daughters of Darshan Singh having got knowledge of the decree passed against their deceased father filed application for setting aside of ex-parte decree, which was dismissed in default on 16.12.2008. The application for restoration was filed on 4.2.2009, which was dismissed vide impugned order dated 19.9.2014. The order has been impugned in the present petition.

Learned counsel for the petitioner submitted that non-appearance of the petitioner or his counsel on the date fixed, i.e., 16.12.2008 was neither intentional nor wilful. In fact, counsel for the

petitioner had noted a wrong date as 1.3.2009. On account of that fault, the litigant should not be made to suffer as non-appearance on the date fixed was for that reason.

After hearing learned counsel for the petitioner, I do not find any reason to interfere with the impugned order. As has been noticed by the court below in the impugned order, the application for restoration of the application filed under Order 9 Rule 13 CPC, which was dismissed in default on 16.12.2008, was filed by Jaspal Singh, as attorney of the successors-in-interest of the judgment-debtor. It is pleaded in the application that on 16.12.2008, the case was fixed for compromise. By mistake, the counsel noted the date as 1.3.2009. The fact remains that on 16.12.2008, none appeared for the petitioner, which date was admittedly in knowledge of the petitioner, as is even stated in the application for restoration. Though it is claimed that the next date of hearing was wrongly noted as 1.3.2009, however, the fact remains that application for restoration was filed on 4.2.2009. Meaning thereby, even that averment made in the application and the affidavit filed in support thereof was wrong. The ground sought to be made out for restoration was merely an after-thought and not borne out from the record. Not only this, in the evidence, Harbans Singh filed his affidavit in support of the plea taken in the application for restoration. It is claimed that he had been given the power of attorney to appear on behalf of the petitioner by Jaspal Singh, who himself was power of attorney holder from the petitioner. There is nothing on record to suggest that Jaspal Singh had been given any power to delegate the same any further. In the absence of that, even the evidence led by the petitioner in support of the application filed for restoration was totally meaningless.

For the reasons mentioned above, I do not find any reason to interfere with the impugned order passed by the court below. The petition is, accordingly, dismissed.

(Rajesh Bindal)  
Judge

18.5.2015  
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