

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2320 of 2013 (O&M)

Date of decision: 27.04.2015

Baljit Kaur

... Petitioner

versus

The Secretary to the Govt. of Punjab Revenue and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. A.S. Wasu, Advocate for the petitioner.

Ms. Vandana Malhotra, Additional Advocate General, Punjab.

Ms. Neha Jain, Advocate for respondent No.5.

K.Kannan, J.

There is simply no merit in the petition filed by the petitioner against the order dismissing the application for restoration of appeal. The appeal was against the dismissal of the suit and it was allowed to be dismissed for default on 24.04.2003. The appeal was restored to file on his application on 16.11.2005. This appeal was again allowed to be dismissed for default on 04.02.2008. The application for restoration was filed on 28.08.2010, i.e. more than period of 30 days from the date of the dismissal of the appeal. The reason trotted out was that they had shifted their residence and counsel who was originally appearing had also died. They came to know about the dismissal only later and therefore, the application was being filed first without restoration only in August 2010. The objections taken *inter alia* were that the petitioner did not choose to examine herself, but, was only making available the version of her son as a power of attorney. There was also an objection that the petition was barred by limitation having been filed more than 30 days from the date of the dismissal of the appeal. The objection prevailed and the petition for restoration had been dismissed.

The revision petitioner contends before me that the appeal which was dismissed in default due to non-appearance on the date of the appeal when the personal presence was neither required nor necessary. She ought not to be made to suffer for the laches committed by his advocate. This was stated so in the decision of this Court in Hema Vs. Ramadevi, 2006 2 RCR Civil 13. I have no difficulty in accepting that the non-appearance of the petitioner on the date itself cannot be a ground to reject the appeal. In this case, there is something more formidable that the appeal was very old one and it had been dismissed for default in the year 2003 and restored in the year 2005. A person that has the appeal restored ought to take enough care to ensure that there is a due representation for prosecuting the appeal. Therefore, it could never be an argument that though the petitioner could not be present, the appeal could not be dismissed. The argument ought to be that inspite of appropriate instructions given, he/she was not duly represented and if there was not due representation, the cause for such representation must be attempted to be given in the application. Article 122 of the Limitation Act reads thus:-

Description of application	Period of limitation	Time from which period begins to run
122. To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of dismissal

The time for restoration shall begin from the date of the dismissal and cannot be picked from an arbitrary date which the petitioner might choose. If in this case, the appeal was dismissed on 04.02.2008, the restoration application should have been filed before

04.03.2008. There is no justification given for not applying to the Court within time and there is not even an application under Section 5 of the Limitation Act for restoration.

We have given too indulgent ways only because we are not ourselves convinced that we have the ability to dispose of every case quickly. If the parties therefore arrive at leisure and ask the matter to be restored, we squirm with some sense of guilt and the system responds with that after all the court itself does not dispose off the cases quickly and if the party takes his own time, he should have the liberty to have the case restored. We must come by refreshing approaches to the cause of expeditious disposal and embrace the principles with passion. When any party knows that a court means business, and he has a duty to ensure that he participates in the proceedings with due alacrity and he himself does not cause a needless delay in the proceedings. I have not the slightest doubt in my mind that a party who takes the Court for granted will have no room for indulgent approaches. The petitioner deserves no sympathy for arriving in the court as per his own convenient time and seeking for restoration. There is no justification for not even filing a petition under Section 5 of the Limitation Act.

I would find no reason for making interference with the order passed by the Court below. The civil revision petition is dismissed with above observations.

27.04.2015
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(K.KANNAN)
JUDGE