

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No. 2591 of 2015 (O&M)

Date of decision : 9.7.2015

Simla Devi

... Petitioner

VS

Ram Lal and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Diwan S. Adlakha, Advocate, for the petitioner.
Mr. Gian Chand Shahpuri, Advocate,
for respondent nos. 1 and 2.

Rajesh Bindal, J.

The petitioner has challenged the order dated 27.3.2015 passed by the learned Court below whereby in an appeal filed by respondent nos. 1 and 2/ plaintiffs, the order dated 6.9.2014 passed by the trial Court dismissing the application for restoration of the suit, was set aside and the application was allowed.

Learned counsel for the petitioner submitted that on account of non-appearance of counsel for the plaintiffs on 26.10.2009, the suit was dismissed in default. The application for restoration was filed more than four months thereafter without showing any sufficient cause and also without accompanying any application seeking condonation of delay in filing the application when admittedly the application should have been filed within thirty days from the date of dismissal in default. The trial Court rightly dismissed the application for restoration vide order dated 6.9.2014. However, the learned Lower Appellate Court allowed the appeal filed against the order of the trial Court and restored the suit merely on sympathetic consideration and not legally. While impugning the order, learned counsel for the petitioner submitted that firstly the application had to be filed showing sufficient cause for non-appearance on the date when the suit was dismissed in default and further sufficient cause for non-filing

of the application for restoration within thirty days therefrom. Both are missing in the present case. Not only this, even application for condonation of delay is not there. Hence, the order passed by the learned Court below which is not legally sustainable and deserves to be set aside. In support of his plea, reliance was placed upon judgments of Hon'ble the Supreme Court in Ashis Kumar Hazra vs Rubi Park Co-operative Housing Society Limited and others AIR1997 SC 2724, N. Balakrishnan vs M. Krishnamurthi 1999 (2) R.C.R.(Civil) 578, and of this Court in Smt. Dev Bala Sehgal vs Devinder Pal Sehgal 2001(4) R.C.R.(Civil) 757, Mool Chand Yadav @ Ashok vs Phool Singh and another 2010(5) R.C.R. (Civil) 8, and Shakti Tripathi vs Supreeti Tripathi 2013(2) PLR 104.

On the other hand, learned counsel for respondent nos. 1 and 2/ plaintiffs submitted that the suit was filed on 4.4.2006. On 26.10.2009, when the suit was dismissed in default, the same was fixed merely for consideration of application under Order XXXIX Rules 1 and 2 CPC. Prior to that in last 3 ½ years, there had been no default on the part of the plaintiffs or their counsel in the suit. The plaintiffs were not to gain anything by delaying the process or by getting the suit dismissed in default, as the defendants are in possession of the suit property. He further submitted that sufficient cause was shown before the Court below for non-appearance. Even otherwise, once the discretion has been exercised by the Court for restoring the suit, as the non-appearance of the counsel for the plaintiffs in Court was not found deliberate or malafide, the same should not to be interfered with. The cost imposed by the learned Court below has already been deposited before the District Legal Service Authority, Yamuna Nagar at Jagadhri. Technicalities should give way to substantial justice. In support of his arguments, reliance was placed upon judgment Hon'ble the Supreme Court in Raj Kishore Pandey vs State of U.P. and others 2009(4) R.C.R. (Civil) 673 and of this Court in Ms. Jasmeet Kaur alias Amandeep Kaur vs S. Joginder Singh and others 2012(3) R.C.R.(Civil) 521.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, the suit was filed by the plaintiffs on 4.4.2006. It was dismissed in default on account of non-appearance of counsel for the plaintiffs on 26.10.2009. At that stage, it was fixed for

consideration of application under Order XXXIX Rules 1 and 2 CPC. It was further pleaded by counsel for respondent nos. 1 and 2/plaintiffs that the defendants in the suit being in possession of the property, the plaintiffs were not to gain anything by delaying the process for disposal of the suit.

No doubt, the application for restoration of the suit was filed four months after passing of the order and without there being any application seeking condonation of delay, however, this Court in Smt. Dev Bala Sehgal's case (supra), opined that in case the application for restoration has been filed beyond the period of limitation, the oral request can also be made for condonation of delay in filing thereof. In the case in hand, the learned Lower Appellate Court has taken care of the aforesaid aspect. It has further been observed that presence of the parties is not normally required on the date when the application for interim stay is to be considered as the parties are represented by their counsels. The plaintiffs, who had filed the suit, were not to gain anything by either getting the suit dismissed in default after pursuing the same for 3½ years or by delaying the disposal thereof. Non-appearance on the date when the suit was dismissed in default, was not found to be deliberate or malafide.

Though learned counsel for the petitioner cited judgments providing for recording of reasons for justification for condonation of delay, however, in the case in hand, the delay is not huge. The claims should normally be decided on merits instead of dismissal thereof on technicalities.

In N. Balakrishnan's case (supra), Hon'ble the Supreme Court held that once the discretion has been exercised by the Court below in condoning the delay, the same should not normally be reversed.

For the reasons mentioned above, in my opinion, the impugned order passed by the learned Appellate Court setting aside the order dated 6.9.2014 passed by the trial Court dismissing the application for restoration of the suit, which was dismissed in default on 26.10.2009, does not call for interference by this Court.

The petition is accordingly dismissed.

9.7.2015
vs

(Rajesh Bindal)
Judge
(Refer to Reporter)