

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

**Civil Revision No. 262 of 2014 (O&M)
Date of decision:- 17.08.2015**

Gurbhej Singh

...Petitioner

Versus

Datar Kaur

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ranjodh Singh Sidhu, Advocate
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 09.07.2013 passed by the learned Civil Judge (Sr. Divn.) Tarn Taran, whereby the application of the plaintiff/petitioner for restoration has been ordered to be dismissed.

The suit of the petitioner was dismissed in default on 24.04.2010 for non-appearance of the parties. Thereafter, the petitioner filed an application for restoration of the suit under order 9 Rule 4 CPC and original suit file was summoned and as per zimny order dated 24.04.2010, none appeared on behalf of the parties despite calling the case several times and ultimately at 3.30 P.M, the

suit was dismissed in default under order 9 Rule 3 CPC. After about a year, the petitioner filed the application for restoration of the suit wherein the only plea taken by the petitioner is that he is residing at Jalandhar and due to this reason, he could not come to attend the case on the date fixed. This plea was discarded by the Court on the ground that the petitioner had engaged a counsel in the main suit but he had also not come present to proceed with the suit. He remained mum after 24.04.2010 and not tried to contact the Court or his counsel. He has not produced any medical certificate etc of that period. Further the address of the petitioner as mentioned in the present petition is of Tarn Taran, thus his plea that he is permanently residing at Jalandhar was discarded.

After hearing learned counsel for the appellant, the present revision petition deserves to be dismissed.

Reference at this stage can be made to a judgment passed by a Co-ordinate Bench of this Court in a case titled as ***Surinder Kaur and another vs. Sameer Bhatia, 2011(5) RCR (Civil) 811*** wherein the petitioners filed restoration application after a period of 16 months and they have taken a plea that their counsel told them that he would inform them whenever their presence would be required but the counsel not informed them and the petitioners shifted from Faridabad to Kapurthala. However, the petitioners failed to mentioned

in restoration application or in revision petition as to when they shifted. Moreover, mere shifting was held to be not a ground for non-appearance in trial Court. The plaintiffs are bound to remain in touch with their counsel to know about the proceedings of the suit. No proper explanation for long delay of almost 16 months in filing restoration application has been given. Since plaintiff could not produce any evidence, they thought it proper to get the suit dismissed-in-default so as to avail the remedy of seeking restoration of suit whenever they thought it fit or suitable to them. The suit was held to be hopelessly time barred.

Recently, a co-ordinate Bench of this Court in a case of ***Bhagirath vs. Rukna Devi and others, 2015 (1) ICC 503*** while examining a case wherein the plaintiff filed a suit on 02.04.1997 and it was dismissed-in-default on 20.07.1999 and restored on 14.08.1999, subject to payment of Rs.1000 as costs. Since the said costs were never paid, the suit was eventually dismissed on 30.09.2003. Thereafter, a time barred civil appeal was filed on 29.11.2003 accompanied with the application under Section 5 of the Limitation Act. The appellant was also dismissed-in-default on 04.08.2004 and thereafter, the application dated 30.09.2004 seeking restoration of the appeal was again dismissed on 22.07.2010 as none had appeared for the applicant.

Another application for restoration was dismissed on 01.08.2014. This

Court in para 8 of the judgment has observed as under:-

8. *The object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. These are meant to see that the parties do not resort to dilatory tactics. In **Indian Council for Enviro-Legal Action vs. Union of India and others, 2011***

(8) SCC 161 also, it was noticed that the conduct of the parties is to be taken into consideration. The relevant observations in Indian Council's case (supra) read as under:-

“216. In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend

himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

218 to 222 xxx xxx xxx

223. The other aspect which has been dealt with in great details is to neutralize any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view.

1. It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

2. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

4. A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

5. No litigant can derive benefit from the mere pendency of a case in a court of law.

6. A party cannot be allowed to take any benefit of his own wrongs.

7. Litigation should not be permitted to turn into a

fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

8. The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts.”

In the present case, it is clear that the petitioner was trying to delay the proceedings, as he had filed the application after a period of one year and the plea taken by him that he was residing permanently at Jalandhar, was discarded on the ground that the address of the petitioner as mentioned in the present petition is of Tarn Taran.

The Courts below has dealt with the matter in correct perspective and there is no illegality in the impugned order of the Courts below warranting interference in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

The revision petition is devoid of merit and is accordingly dismissed.

17.08.2015

G Arora

(**RITU BAHRI**)
JUDGE