

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.3008 of 2015

Date of Decision.15.05.2015

Major Harindar Singh Gill

.....Petitioner

Versus

State Bank of India and others

.....Respondents

Present: Mr. Aman Pal, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J.

1. The revision petition is against the order passed in the application under Order 9 Rule 4 read with 151 CPC for setting aside the order passed on 07.04.1992, the details of which are not clearly known. In a normal situation, a suit which was dismissed for default under Order 9 Rule 4 CPC for taking steps to the defendants could have been favourably considered by taking a liberal view that the suit would require to be adjudicated after service of notice on all defendants. This situation cannot obtain in this case and the trial Court has undertaken an elaborate consideration of the various circumstances that would show that the plaintiff has been grossly negligent, contemptuously indifferent and has allowed for things to literally get out of control and that no purpose will be served by setting aside the order passed already on 07.04.1992.

2. This suit was instituted on 07.12.1989 to contend that a

particular court auction/sale brought at the instance of the State Bank of India for enforcing a security is not valid and binding on the plaintiff. The contention in the plaint was that the property belonged only to the plaintiff and the mortgage purported to have been created by the mortgagors did not have a right in the property. After the institution of the suit, the plaintiff had not taken steps effectively for serving the defendants No.2 to 5 and allowed only for the 1st defendant-State Bank of India to file its reply. After the suit was dismissed on 07.04.1992, the plaintiff had taken no steps for having the suit restored against defendants No.2 to 5 but appears to have engaged a different counsel who filed an application belatedly on 19.02.1994 for restoration of the suit. The contention in the application was that previous counsel had not informed the plaintiff about the dismissal of the suit against defendant Nos.2 to 5 on 07.04.1992. The application obviously was filed more than 30 days from the date of dismissal of the suit against defendant Nos.2 to 5. When an application was filed for setting aside the order dated 09.04.1992, the applicant had made no reference to the restoration application filed under Order 9 Rule 4 CPC but there was otherwise specific relief for restoring the suit and setting aside the order already passed in the year 1992. The plaintiff moved an application under Section 5 of the Limitation Act belatedly and sought for consideration of the applications which were filed in the year 1994. The application was dismissed on 30.07.1994 holding that no petition had been filed under Order 9 Rule 4 CPC to set aside the order dated 07.04.1992. The plaintiff, therefore, filed an application for review contending that the order passed was erroneous and that they must be

recalled, for, there was adequate prayer for setting aside the order and the previous application must have been construed only as filed under Order 9 Rule 4 CPC. The Court declined the application holding that the plaintiff could have availed of other remedies available under law and the Court had no power to recall its own order.

3. The plaintiff, therefore, sought to make good the defect of what his previous application suffered from and moved a petition for restoring the suit and setting aside the order by an application under Order 9 Rule 4 CPC. Even apart from this application, the petitioner also filed application under Section 5 of the Limitation Act on 28.01.1995. All the earlier contentions raised for not filing the petition within time and the circumstance that had led to the rejection of the pleas were reiterated. The contest was entered only by the 5th respondent who stated that there was simply no ground for condoning the delay in filing the application under Order 9 Rule 4 CPC. This application has been retained in the Court file for nearly two decades till it was decided on 28.04.2015.

4. The application has become stale. If the plaintiff is going to rely on a statement by the State Bank of India that the property had been wrongly sold, the plaintiff may take such advantage as it is possible but I will find no justification for lending premium to a person's negligence in allowing a suit instituted in the year 1989 to be dismissed for default against some of the defendants in the year 1992 and coming with the applications for restoration of the suit two years later and after having suffered the order, coming with the application for review and approach this Court for reconsideration.

5. There is nothing patently wrong or illegal about the order for interference. The impugned order is maintained and the civil revision is dismissed.

(K.KANNAN)
JUDGE

May 15, 2015
Pankaj*