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

CR No.3548 of 2015 (O&M)

Date of decision: May 25, 2015

Kulwinder Kaur

.....Petitioner

Versus

Iqbal Singh proprietor and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sharad Mehra, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 09.03.2015, whereby application moved by the petitioner for recalling the order of restoration of the suit, was dismissed.

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

Respondent No.1 and 2 had filed suit for possession by way of specific performance of agreement to sell dated 10.06.2005 executed by Avtar Singh in their favour. On 14.09.2007, respondent Nos.1 and 2 withdrew the suit qua defendant Amar Singh. Vide the said order, respondent No.2 Avtar Singh was proceeded *ex parte*. Suit filed by the plaintiffs was dismissed-in-default vide order dated 11.09.2012. Plaintiffs moved an application on 12.09.2012

(Annexure P-9) for restoration of the suit. The said application was allowed by the trial Court vide order dated 22.02.2014. While restoring the suit, the trial Court held that the suit was dismissed-in-default on 11.09.2012, whereas, the application for restoration had been moved on the very next day. Suit was restored subject to payment of ₹1,000/- as costs and the case was adjourned for consideration on application under Order 1 Rule 10 of Code of Civil Procedure, 1908 filed by the petitioner. Thereafter, petitioner moved an application for recalling the order dated 22.02.2014. Trial Court vide the impugned order rightly dismissed the application as the application for restoration of the suit was moved on the very next day, i.e. 12.09.2012, whereas, the suit was dismissed-in-default on 11.09.2012. The fact that defendant Amar Singh had died, was also no ground to recall the order of restoration of the suit as now the legal representatives of deceased Amar Singh can be brought on record and the suit will be decided on merits.

In these circumstances, impugned order calls for no interference.

Dismissed.

**(SABINA)
JUDGE**

May 25, 2015

m.singh