

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

CR No. 355 of 2012 (O&M)

Date of decision: 25.08.2015

Rajinder Kumar Jain

... Petitioner

versus

Haryana State Small Industries and Export corporation Limited and
another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Harkesh Manuja, Advocate for the appellant.

Mr. Amit Jaswal, Advocate with

Ms. Naveender P.K. Singh, Advocate for the respondents.

K.Kannan, J.

The revision is for restoration of the suit which is dismissed in default. The application was dismissed holding that the plaintiff was only delaying the case and his own past conduct showed that he was every time in default. The Appellate Court confirmed the same.

The suit related to a right to immovable property and issue for adjudication is whether the resumption ordered by the Haryana State Small Industries & Export Corporation Limited (in short 'HSIDC') was justified or not. During the pendency of the suit itself, the plaintiff had the benefit of directions for deposit of the installments due and payable

which they were defaulted originally and which had given rise to cause for resumption. The suit still lingered on only for a consideration of whether the plaintiff would also be liable for interest and if so, to what extent. Since the deposits have been made on the directions of Court, it also becomes essential for consideration whether HSIDC could condone the delay and allow for an allotment to be made regular or it should be allowed to have the order of cancellation prevail through an adjudication. The suit which was pending from the year 1996, came to be dismissed after nearly 12 years and justifiably so, when the plaintiff was not present. The only virtue about the applicant is that he filed an application for restoration within two days and the Court found that it was unimpressed by his past conduct and did not give him the benefit of restoration. By the time when the appeal was filed, the plaintiff himself had attempted to assign the right to property by power of attorney and a Will and the person holding such document came on record, to prosecute the case. The appeal also was dismissed.

The counsel for the petitioner pleads for one last chance to conduct the case, for otherwise he will be put to great hardship. The counsel appearing on behalf of the HSIDC vehemently opposes any plea for a fresh trial and would reiterate on the findings recorded already about the past recalcitrant conduct of the plaintiff and the persistent delays that had been caused at the instance of the plaintiff himself. The counsel would argue that the plaintiff himself is not any longer in picture and he has created documents such as power of attorney and Will which cannot be treated as any transaction of sale or valid transfer in the light of

the law laid down by the Supreme Court in Surya Lamp and Industries Private Limited Vs. State of Haryana and another, 2009 (7) SCC 363.

I may not really considering whether the plaintiff could execute the document of power of attorney and Will and validate entitlement to secure a sale to the benefit of the assignee from HSIDC. The legal representative which the law contemplates is a larger expression than legal heir and any person who even intermeddles with the estate would be termed to be a representative, as per the definition in Section 2(11) CPC, Order 22 Rule 10 similarly contains an expansive definition for a representative to be brought on record even if such a person is an assignee of interest of the party. I would treat the petitioner to be such an assignee who can canvass for a right whichever was possible for the plaintiff. Since there is an interest in immovable property which is involved and on the own showing of the plaintiff that he has been grossly negligent, I would think it appropriate in the interest of justice to allow for the suit to be restored but impose on the petitioner, for the gross negligence in the manner of how he had allowed for the proceedings to drift and caused enormous inconvenience to the respondent a cost of Rs. 25,000/- to be paid as condition precedent for allowing the application. The cost of Rs. 25,000/- shall be paid to HSIDC within a period of 4 weeks failing which the order already passed will stand confirmed.

The impugned order is set aside subject to the condition of payment of cost and stipulation of time within which the amount is to be

paid. The civil revision petition is allowed on above terms.

Parties to appear before the trial Court on 02.11.2015.

25.08.2015

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(K.KANNAN)
JUDGE