

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

**CR No.3618 of 2013
Date of decision: 17.08.2015**

Ram Mehar

... Petitioner

Vs.

Layak Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Surender Deswal, Advocate
for the petitioner.

Mr. Navneet Singh, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the order dated 05.02.2013, (Annexure P-6), whereby, the application seeking restoration of the case has been dismissed on the premise that the application was not accompanied by an affidavit.

Mr. Surender Deswal, learned counsel appearing on behalf of the petitioner submits that on 10.03.2011, the suit was dismissed in default on the ground of non-appearance of both the sides but yet the trial Court has proceeded further with the trial which

fact is evident from the perusal of the zimni orders passed from time to time and therefore, the application was filed on 10.03.2012, after coming to know about the hurdle created by an order dated 10.03.2011, such type of order is required to be recalled by the trial Court, without having filed any application. Thus, dismissal of the application has resulted into miscarriage of justice, for the reason, that even an application for amendment of the plaint was allowed and the same was not objected to by the respondent-defendants.

Mr. Navneet Singh, learned counsel appearing on behalf of the respondents submits that the application has rightly been dismissed, as it was not accompanied by an affidavit and the impugned order does not suffer from any illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book.

The zimni order passed on 10.03.2011, whereby, the suit was dismissed in default reflects that the suit was proceeding on merits. For the sake of brevity, orders passed after 10.03.2011 are reproduced herein below:-

“Present:- Sh. N.S. Saini, Adv. for the petitioner.

Sh. K.K.Sharma, Adv.for the respondent.

Today objection against the report of the Local Commissioner filed by the petitioner. No PW is present. Ld. Counsel for the petitioner requested for an

adjournment. Request allowed. Now, to come upon 7.12.2011 for PWs.

*Sd/-
(Narinder Kaur)
ACJ(SD)/G/3.6.2011"*

"Present: Sh. S.K.Sharma, Adv. for the petitioner.

Case file taken up on an application for early hearing for permission to amend the plaint moved on behalf of the petitioner through his counsel. Now, notice of the same is ordered to be issued to the opposite party/counsel for 17.08.2011.

*Sd/-
(Narinder Kaur)
ACJ(SD)/G/9.8.2011"*

"Present:- Sh. S.K.Sharma, Adv. for the petitioner.

Sh. K.K.Sharma, Adv.for the respondent.

Counsel for respondent has appeared and made no objection endorsement on the application for permission to amend the plaint. In view of no objection so made by counsel for the respondent, the application stands allowed. Now to come upon 7.12.2011 for filing of amended plaint.

*Sd/-
(Narinder Kaur)
ACJ(SD)/G/17.8.2011"*

*“Present:- Sh. S.K.Sharma, Adv. for the petitioner.
Sh. K.K.Sharma, Adv.for the respondent.*

*Amended plaint not file. Adjournment
requested by the counsel for the petitioner. Request
allowed. Now, to come upon 1.2.2012 for filing of amend
plaint.*

*Sd/-
(Narinder Kaur)
ACJ(SD)/G/7.12.2011”*

*“Present:- Sh. S.K.Sharma, Adv. for the petitioner.
Sh. K.K.Sharma, Adv.for the respondent.*

*Amended plaint filed. Now, to come upon
6.3.2012 for further proceedings.*

*Sd/-
(Narinder Kaur)
ACJ(SD)/G/7.12.2011”*

On perusal of the aforementioned zimni orders, it is evident that the trial Court has allowed the amendment of the plaint and amended plaint was also filed. On having been asked, whether trial Court has brought the factum of aforementioned and perhaps it would not dismiss the application, for the reason, that it was not accompanied by the affidavit. Procedure is handmaid which should not come in advancing justice but not for miscarriage of justice. The application was simpliciter notice to the Court about the inadvertence as per contents of order dated 10.03.2011, once the Court has

proceeded with the trial of the suit, the order dated 10.03.2011 had in my view been rendered otiose. The impugned order, in my view, suffers from illegality and perversity, as it tantamounts to the miscarriage of justice to the petitioner and accordingly, the same is set aside. The trial Court is directed to decide the suit on merits, in accordance with law, as expeditiously as possible.

Disposed of.

(AMIT RAWAL)
JUDGE

August 17, 2015
savita