

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

CR No.3664 of 2012 (O&M)

Date of decision : 04.09.2015

Guddi and ors.

...Petitioners

Versus

Ashok Kumar and ors.

...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. J.S. Cooner, Advocate for petitioners.

Mr. R.N. Singhal, Advocate for respondent No.3.

Mr. Rajesh Sharma, Advocate for respondent No.6.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the order dated 19.03.2012, whereby application seeking restoration of the claim petition bearing No.161 dated 16.09.2006 titled as Smt. Guddi and ors. Vs. Ashok Kumar and others, dismissed in default on 30.04.2008, has been dismissed.

Mr. J.S. Cooner, learned counsel appearing on behalf of claimants of deceased Ramesh Kumar, who is stated to have died in accident, submits that they availed services of one Neeraj Bhardwaj, Advocate, Ambala and Ved Priya Arya, Advocate, Bhiwani for filing the claim petition. Inadvertently, two separate claim petitions were filed by both Advocates, and both the claim petitions were clubbed vide order dated 24.02.2007. Shri Ved Priya Arya, Advocate, Bhiwani did not appear on 30.04.2008 and the claim petition was

dismissed for non-prosecution. For the purpose of acquiring the status of the case, the petitioners, stated to have contacted the aforementioned advocate, but he did not apprise the petitioners about the aforementioned order and rather was told, otherwise.

It has been submitted that claim petition titled as Mansa Ram Vs. Ashok Kumar and ors. filed by the petitioners in respect of death of Smt. Sarbati petitioners had engaged Mr. Mahesh Bhardwaj Advocate, Bhiwani and on 28.08.2010 appeared for evidence and it is only then, they inquired from Mahesh Bhardwaj, Advocate about the claim petition No.161 of 2006 and came to know that no such claim petition was consolidated and on inspection acquired that the petition was dismissed on default on 30.04.2008 and accordingly application for restoration of the claim petition aforementioned, was moved. He submits that claim petition had been dismissed on the ground that application for restoration was filed after three years from the date of dismissal and no reasonable explanation has been given. He further submits that petitioners would suffer irreparable loss in case claim petition is not restored instead they have also suffered the loss of love and affection on account of demise of Ramesh Kumar.

Mr. R.N. Singhal, learned counsel for respondent No.3-Insurance Company submits that application seeking condonation of delay was not accompanied by an affidavit and even otherwise there was delay of another six months in filing the aforesaid application after acquisition of the knowledge and, therefore, the application has rightly been dismissed.

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

Shorn of the facts and noticing rival contention of parties, it is

matter of record that claim petition No.161 of 2006 had been filed on account of death of Ramesh Kumar. In such accident, many persons, stated to have died and in this regard numerous claim petitions were filed. Petitioners were under the impression that claim petition aforementioned i.e. 161/06 titled as Smt. Guddi and ors. Vs. Ashok Kumar and others was also pending with the other claim petitions, and, therefore, they had not contacted the previous counsel Ved Priya Arya.

It is now settled law that parties shall not suffer for lapse of counsel in view of judgment rendered in *1981 AIR (SC) 1400, Rafiz and another Vs. Munshilal and another*.

Dismissal in default, in my view has rendered a miscarriage of justice to the claim petitioners and no prejudice will be caused, in case petition is decided on merits. However, petitioners, in case of succeeding in the claim petition, would not be entitled interest for the period, aforesaid, the claim petition remained dismissed in default.

In view of what has been observed above, impugned order is hereby set aside.

The application for restoration of the claim petition bearing No.161 of 2006 is allowed.

Claim petition is restored to its original number.

Parties as well as their counsels are directed to appear before MACT, Bhiwani on 29.09.2015.

Civil Revision stands disposed of.

04.09.2015

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**(AMIT RAWAL)
JUDGE**