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

CR No.4045 of 2012 (O&M)

Date of decision: April 28, 2015

Rajmal Honda

.....Petitioner

Versus

Samunder Singh Rath and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S. Bains, Advocate
for the petitioner.

Mr. Vikrant Hooda, Advocate
for the respondents.

SABINA, J

Petitioner has filed this petition challenging the orders dated 06.11.2008 and 05.04.2011.

Learned counsel for the petitioner has submitted that the petitioner had been pursuing his case since the year 1994. Petitioner had led his entire evidence. However, due to his ill health, petitioner could not appear before the trial Court on 07.05.2013. Consequently, application moved by the petitioner for restoration of the case was liable to be allowed. In support of his arguments, learned counsel has placed reliance on **N. Balakrishnan versus M. Krishnamurthy**, 1998-LAWS(SC) 9-7, wherein it was held as under:

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant

concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

Learned counsel has further placed reliance on ***M.K. Prasad versus P. Arumugam***, AIR 2001 Supreme Court 2497, wherein it was held as under:

“In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed under S.5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgment

impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case we set aside the order impugned and condone the delay in filing the application for setting aside ex-parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex-parte decree as well.”

Learned counsel for the respondents, on the other hand has opposed the petition and has submitted that the Courts below had rightly dismissed the application moved by the petitioner for restoration of the case. In fact, the Appellate Court while dismissing the appeal filed by the petitioner had taken in consideration the conduct of the petitioner. In support of his arguments, learned counsel has placed reliance on **Smt. Dev Bala Sehgal versus Devinder Pal Sehgal**, 2001(4) R.C.R. (Civil) 757, wherein it was held as under:

“11. It is abundantly clear that the application in hand for restoration of the suit was not filed within 30 days from the date of dismissal of the suit in default. The Court could not extend the time of limitation by bringing it under the principle of “interest of justice” and by passing the mandatory provisions of Article 122 of the Limitation Act, 1963

Article 122 of the Limitation Act 1963 does not provide that the application has to be filed within 30 days from the day of knowledge of the suit having been dismissed in default. In fact, it is very specific and clear that it has to be counted from the date of dismissal. The application having been filed beyond the prescribed period of limitation and the limitation having not been condoned on a written application or an oral request of the plaintiffs, the Court cannot restore the suit while invoking the inherent jurisdiction under Section 151 Civil Procedure Code. It is well-established that the express provisions of law cannot be over-ridden by invoking inherent jurisdiction.”

Learned counsel has further placed reliance on ***Devi Sahai versus Mahabir Prashad***, 1997(4) RCR (Civil) 507, wherein it was held as under:

“7. Sufficient ground has to be shown before delay in filing of the revision petition can be condoned. It would not be possible to define sufficient ground. Each case has to be decided on its own facts and circumstances. Normally sufficient ground would be one which is a fact which was beyond the control of the petitioners who seek condonation of delay. But if a party or a person claims condonation of delay on facts which are not only incorrect but patently unbelievable, it will not amount to sufficient ground for condonation for delay. ”

Petitioner had filed suit for permanent injunction. On 07.05.2003, suit filed by the petitioner was dismissed-in-default as none had appeared on behalf of the petitioner-

plaintiff. Thereafter, petitioner moved an application for restoration of the suit on 24.09.2003. Case of the petitioner was that on 07.05.2003, he was unwell and had gone to PGIMS Rohtak for treatment. Due to this reason, petitioner could not appear before the trial Court. Learned Appellate Court while dismissing the appeal filed by the petitioner against the order, whereby application for restoration of the suit was dismissed by the trial Court, has held as under:

*“13. A perusal of article 122 of the Limitation Act reveals that for filing the application for restoration of the suit is only 30 days and not three years as argued by learned counsel for the plaintiff. In the view I have taken, I am supported by the authority of Hon'ble Punjab & Haryana high Court reported as **Smt. Dev Bala Sehgal and others Vs. Devinder Pal Sehgal and others 2001-1 The Punjab Law Reporter 775**. I rely upon the authority of our own Hon'ble High Court in the case titled as **Smt. Dev Bala Sehgal and others Vs. Devinder Pal Sehgal and others (Supra)** Learned lower court had considered the record produced by the plaintiff alongwith the application for restoration of the suit. Learned lower court has observed in para No.5 of the order under appeal that the plaintiff had placed on record prescription slips issued by PGIMS Rohtak, wherein certain medicines were prescribed. The plaintiff did not produce any record to prove the fact that he remained indoor patient in some hospital on 7.5.2003 when the case was dismissed in default. During the course of arguments, plaintiff admitted that on 7.5.2003 he was not an indoor patient in any*

hospital. He further admitted that for 7.5.2003 he was not advised bed rest by any doctor. He further admitted that he did not move any application against his counsel for his non appearance before the lower court on 7.5.2003. A perusal of the record reveals that the plaintiff did not move any application for condonation of delay in filing the application for restoration of the suit before learned lower court. In case the plaintiff could not appear on 7.5.2003, in his absence, his counsel could appear and cross-examine the witnesses but he also did not prefer to appear in the court. No action was taken by the plaintiff against his counsel. As discussed earlier on 26.2.2003 when nine witnesses of the defendant were present, the plaintiff moved an application for change of counsel and on that day nine witnesses of the defendant were sent back unexamined by the court. When the case was fixed for 17.3.2003 for the evidence of the defendant, the plaintiff moved an application on 15.3.2003 for change of the date. On 4.3.2003, when fourteen witnesses of the defendants were present in the court, the plaintiff moved an application for transfer of the case leveling allegations against the Presiding Officer and on that day the court had to send back fourteen witnesses of the defendant unexamined. On 7.5.2003 when the case was fixed for the evidence of the defendant and fourteen witnesses of the defendants were present neither plaintiff nor his counsel appeared. The case was called in pre lunch session. Thereafter, the case was again called after lunch hours but both the times none appeared on behalf of the plaintiff.”

The reasons given by the Appellate Court while dismissing the appeal filed by the petitioner are sound

reasons. The learned Appellate Court has taken in consideration the conduct of the petitioner. It has further been noticed by the Appellate Court that petitioner was not advised bed rest by any doctor. Moreover, the application had been moved by the petitioner after considerable delay and petitioner had failed to explain the delay in filing the application for restoration of the suit. In the facts and circumstances of the present case, the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner.

Hence, the impugned orders call for no interference.

Dismissed.

**(SABINA)
JUDGE**

April 28, 2015

m.singh