

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

CM No. 25075 CII of 2015 and
CR No. 4475 of 2006 (O&M)
Date of decision: December 8, 2015

Sewa Singh

...Petitioner

Versus

Sh. Balbir Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 1. Whether Reporters of local papers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Aakash Juneja, Advocate, for
Mr. Lakhwinder Singh Mann, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. There is an application for restoration of the revision which was dismissed in default on the failure of the petitioner to take steps to serve notice on the legal representatives of the respondent. The death of the sole respondent was reported in the court in March, 2013 when it was stated that respondent—Balbir Singh had died on 14.10.2009. The petitioner has not been able to take effective steps to serve the legal representatives of the respondent for all these six years and even on the date when the case was fixed, there was no representation for the petitioner also and it was dismissed in default on 3.11.2015. On the application filed for restoration, I wanted to satisfy myself whether any purpose would be served in giving an opportunity to the petitioner. I directed the counsel that I will restore the

case and will give yet another opportunity to serve the legal representatives of the respondent, if there was anything worthwhile for the petitioner to prosecute. I noticed that the revision itself is against an order declining to extend the time for depositing of the balance of sale consideration recited in the agreement dated 12.3.1999. The suit had been decreed ex-parte on 30.11.2005 allowing for the plaintiff to deposit the balance of sale consideration within one month and obtain a sale deed from the defendant. The time had expired on 30.12.2005, when an application was filed for extension of further time, the plaintiff had stated that he came to know about the decree only on 4.4.2006 and before that date he had been away to his village Kaida, Post Office Barakota, Rajasthan and later had gone abroad and he had not contacted his lawyer. On return on 22.3.2016, his lawyer was reported to have told him about the decree. The non-deposit, according to the plaintiff, was due to ignorance of the direction given by the court. The court did not serve notice of the application on the respondent since the plaintiff seems to have sought for the relief without notice on the ground that the defendant had already remained ex-parte. The court found that there was no appropriate justification given for seeking for extension of time. The Court found that it cannot go beyond the scope of the decree.

2. Though I will not find that the court did not have the power to extend the time, it was surely a case where the plaintiff had allowed the time to drift by without complying with the direction in the manner it should have been done. Even after filing of the revision petition, the case has languished for nearly a decade without any order and without effective steps on the part of the plaintiff/decreed-holder to comply with the terms.

3. If the revision petition were to be restored, the issue would be, whether the plaintiff could be afforded an opportunity of putting the decree in execution. Essentially the prayer for extension of time for depositing must be in the realm of discretion and I do not think an agreement dated 12.3.1999 should be considered for enforcement when the balance of sale consideration has still not be paid. If only the matter would require the adjudication of whether time should be extended or not, it will be grossly inexpedient to do so at this length of time. I, therefore, do not interfere with the order declining to extend the time, but I allow for an appropriate application to be moved before the court below to seek for refund of the amount paid. Such a petition may be moved by the petitioner himself by impleading the legal representatives of the defendant who were impleaded here and the court will pass an order after serving notice having particular view of the provision under Section 28 (2) (b) of the Specific Relief Act, 1963 that provides for refund of consideration paid at the time of agreement.
4. The application and the revision petition are dismissed with the above observations.

December 8, 2015
prem

(K.KANNAN)
JUDGE