

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

C.R.No.4481 of 2014 (O&M)

Date of Decision: December 8, 2015

Parkash Ram Malhan

...Petitioner

Versus

Piara Ram Malhan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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: Mrs.Jatinder Jit Kaur, Advocate,
for the petitioner.

Mr.Naresh Kaushik, Advocate for
Mr.T.P.S.Bhatti, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the order dated 24.4.2014, whereby the application filed for seeking restoration of the suit, which was dismissed in default on 13.6.2007, has been declined being barred by law of limitation.

Mrs.Jatinder Jit Kaur, learned counsel appearing on behalf of the petitioner-plaintiff submits that the petitioner is an N.R.I. and was not in India when the suit was dismissed in default on 13.6.2007. She further submits that since the counsel engaged did not appear, obligation was upon the Court to issue notice to the plaintiff. No such exercise has been done and the application has also been dismissed summarily without framing issues and, therefore, the petitioner has been prevented to prove on record

that he was not in India when the suit was dismissed in default.

Mr.Naresh Kaushik Advocate for Mr.T.P.S.Bhatti Advocate, appearing on behalf of respondent No.1 submits that the application was wanting the explanation as it was filed after the lapse of approximately 1 year and 11 months and rightly so, has been dismissed.

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

It is settled law that when the counsel does not appear, the Court is required to send notice to the plaintiff. Be that as it may, even otherwise non-appearance of the counsel is a breach of fiduciary relationship and the Hon'ble Supreme Court has heavily relied upon such acts of the lawyers in **Himalayan Coop. Group Housing Society Versus Balwan Singh**, 2015(7) SCC 373. In my view, once the application has been decided summarily, the petitioner-plaintiff has been prevented from leading the evidence to prove that during all this period, i.e., 1 year and 11 months, he was not in India and, therefore, was prevented in moving the application and on acquiring the knowledge, the application was moved within 30 days and, therefore, could not have been dismissed for being barred by 1 year and 11 months.

Keeping in view of the aforementioned facts and circumstances, the impugned order is set-aside. The application is allowed and the suit is restored to its original number.

Revision petition stands allowed.

December 8, 2015
ramesh

(AMIT RAWAL)
JUDGE