

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5193 of 2015
Date of Decision: December 14, 2015

Jasmir Singh

...Petitioner

Versus

Bhajan Kaur & 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: Mr.K.K.Saini, Advocate for
Mr.Tarunveer Vashist, Advocate,
for the petitioner.

None for the respondents.

AMIT RAWAL, J. (Oral)

The petitioner-decree holder is aggrieved of the order dated 11.3.2015, whereby the application seeking restoration of the execution application has been dismissed.

Mr.K.K.Saini, Advocate for Mr.Tarunveer Vashist, learned counsel for the petitioner submits that Execution Application No.99 dated 1.4.2006 was dismissed in default on 3.3.2012 and the application for restoration dated 21.7.2012 was filed on acquiring the knowledge.

The reason stated in the application was that when the applicant-petitioner contacted his previous counsel on telephone to know about the execution application, he told that there was no need of the decree-holder to come present on the date when the execution application

was slated for adjudication. However, on 4.5.2012 he appeared before the

trial Court and realised that his case was not listed in the cause list. Thereafter, he enquired about his case from the record and realised that the execution application has been dismissed on account of the willful absence of the decree-holder. In support of his contention, relies upon the judgment rendered in **Rafiz & Anr. Versus Munshi Lal & Anr.**, AIR 1981 SC 1400.

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

The reasons mentioned in the application, in my view, is fair, legal and just. In case the counsel of the applicant had not appeared before the Executing Court, the Court should have issued notice to the decree-holder on account of the non-appearance of the counsel. It was not the perpetual default, but only a single default on 3.3.2012. In my view, the trial Court has committed illegality and perversity in declining the application as the Court has not taken into consideration that the petitioner-decree holder would not be able to enjoy fruits of the decree for want of default of the counsel. It is settled law that the person should not be made to suffer on account of the fault of the counsel.

Keeping in view the aforementioned facts, the impugned order is set-aside and the execution application is restored to its original number.

Revision petition stands allowed.

December 14, 2015
ramesh

(AMIT RAWAL)
JUDGE