

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5161 of 2014
Date of Decision : February 18th , 2015

Amarjeet Singh

.... Petitioner

Versus

Manjit Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. D.S.Gill, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, Advocate
for the respondent.

Dr. BHARAT BHUSHAN PARSOON, J.

A suit for recovery of ₹4,08,000/- [₹3,00,000/- as Principal amount and ₹1,08,000/- as interest] on the basis of *pronote* and receipt dated 12.03.2010 was pending adjudication before the lower Court, where summons for service of the defendant calling him upon to answer the claim of the plaintiff and to file written statement of his defence, if any, issued in terms of Order I Rule 5 CPC, were received back with the report that 'address was incorrect'.

2. Innumerable opportunities were granted to the plaintiff for furnishing correct address of the defendant to effect his service on the given address, but compliance of the orders of the Court was not made and consequently, vide order dated 16.01.2014, suit of the plaintiff was dismissed for want of filing of correct address of the defendant.

3. An application was moved by the plaintiff for restoration of the suit, notice of which was issued to the defendant, who appeared through his counsel. Application was contested tooth and nail and was ultimately

dismissed on 4.7.2014. Impugning orders dated 16.1.2014 [Annexure P/1] and 4.7.2014 [Annexure P/2], this revision petition has been preferred by the plaintiff-petitioner herein.

4. Counsel for the petitioner has urged that since attendance of the defendant-respondent herein, has been procured, there is no impediment in restoration of the suit to its original number for its adjudication on merits on imposing reasonable costs.

5. Counsel for the respondent, on the other hand, has urged that once the suit has already been dismissed for non-compliance with orders of the Court, remedy with the plaintiff-petitioner is to file a fresh suit if the same is within limitation. To support his claim, reliance has been placed on sub-rule [2] of Rule 5 of Order IX CPC in this regard.

6. During the course of arguments, addressed by counsel for the parties, when the paper book has been perused, it transpires that summons were issued to the defendant for his appearance and for settlement of issues for 9.5.2013. Those had been received back with the report that the address of the defendant was incorrect thereon. The Lower Court then had asked for correct address of the defendant and the case was adjourned for service of the defendant for 24.5.2013.

7. The plaintiff-petitioner herein continued seeking adjournments for service of the defendant on furnishing of correct address by him, but did not furnish the same and no compliance of the orders of the Court was made. The case continued being adjourned for 4.7.2013, 29.7.2013, 24.08.2013, 10.9.2013, 7.10.2013, 29.10.2013, 14.11.2013, 29.11.2013, 3.12.2013, 18.12.2013, 16.1.2014. Even when caution was given to the plaintiff granting 'last opportunity' to him to comply with the orders of the Court, he took the matter casually and did not comply with the orders of the Court.

8. There is no dispute that order of dismissal of the suit on 16.1.2014 is supported and sanctioned by provisions of Rule 5 of Order IX CPC, which for ready reference, is reproduced on the next page:-

“5. Dismissal of suit where plaintiff, after summons returned unserved, fails for [seven days] to apply for fresh summons.--- [(1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of [seven days] from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons, the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that --

- (a) he has failed after using his best endeavours to discover the residence of the defendant, who has not been served, or
- (b) such defendant is avoiding service of process, or
- (c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.]

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.”

9. Reading of the above provision leaves no manner of doubt that dismissal of the suit was result of casual approach of the plaintiff in non-compliance with the orders of the Court. When correct address of the defendant was not furnished despite grant of more than 13 opportunities, (what to talk of applying for issuance of fresh summons within seven days of return of the earlier summons issued to the defendant for his appearance in terms of Rule 5 of Order IX CPC), in the present case, it is the Court which had been bothering itself to call the defendant time and again for furnishing correct address of the defendant for issuance of fresh summons], but the plaintiff did not comply with the orders of the Court.

10. The question which poses for answer at this stage is as to whether the plaintiff should be relegated to his remedy in terms of Rule 5[2] of Order IX CPC, whereby a fresh suit may be filed by the plaintiff and may be entertained, if the same is within limitation, or the earlier suit dismissed vide impugned order of 16.1.2014 be restored to its original number?

11. Notwithstanding non-serious approach of the plaintiff-petitioner resulting in passing of impugned order of 16.1.2014 [Annexure P/1]

whereby the suit was dismissed, it remains a fact that no adjudication on merits had come forth. Defendant-respondent herein has appeared before the Court below and has contested the application for restoration of the suit. Notwithstanding such contest, it is to be noticed that no gain has accrued to the plaintiff in delaying and dilating the service of the defendant. Rather, the plaintiff had been a loser as adjudication of his suit on merits could not be made and the matter has been delayed considerably.

12. Parties win or lose not on technicalities but on determination of substantive rights on merits of their rival claims. It is thus, felt that it is not a case where suit of the plaintiff-respondent should be allowed to keep buried in the record room without adjudication on merits.

13. Defendant-respondent herein has already appeared. To avoid multiplicity of litigation and not to proliferate its off shoots further, it is in the interest of justice that the dispute between the parties should be resolved by adjudication by giving opportunity to the defendant to file written statement on restoration of the suit to its original number by setting aside the order of 16.1.2014 as also of 4.7.2014.

14. For the casual and perfunctory approach of the plaintiff reflected in impugned order of 4.7.2014 [Annexure P/2], costs of ₹ 10,000/- is imposed on him to be paid to the respondent-defendant. The revision petition is allowed and the suit stands restored to its original number.

15. Parties are directed to appear before the Court below on 12.03.2015 on which date, the defendant-respondent would file his written statement and the matter would proceed further as per law.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

February 18th, 2015
som