

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

CR No.6991 of 2008 (O&M)
Date of Decision: 12.01.2015

Major Harinder Singh Gill (Retd.)

. . . .Petitioner

Versus

State Bank of India and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.D.S. Keer, Advocate,
for the petitioner.

Mr.Rakesh Gupta,
for the respondents.

RAKESH KUMAR JAIN, J. (ORAL)

This revision petition is directed against the order dated 8.5.2008 by which an application filed by the petitioner under Order 3 Rules 1 and 4, Order 9 Rules 1, 2, 4, 7 & 10 read with Section 151 of the Code of Civil Procedure, 1908 [for short 'the CPC] and Articles 141 & 144 of the Constitution of India has been dismissed.

Shorn of unnecessary details, it would suffice to mention herein that in the suit filed by the petitioner, there were 5 defendants out of whom defendant No.1 had put in appearance but defendants No.2 to 5 could not be served for want of deposit of process fee and suit against them was dismissed for non-prosecution. The petitioner filed an application for restoration of the suit against those defendants. Since, the limitation had expired therefore, an application was also filed for condonation of delay in filing the application. Defendants No.2 and 4 filed their

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reply to the application and raised no objection but defendant no.5 contested the application and as a result thereof, the impugned order has been passed in which the Court has observed that presence of defendant No.5 is marked for all intents and purposes to decide the application under Section 5 of the Limitation Act and the case was adjourned to 3.6.2008 for evidence of the applicant on the application for condonation of delay.

Learned counsel for the petitioner has argued that defendant No.5 would now file the written statement, however, in the impugned order it is not so ordered. As a matter of fact, the impugned order has been passed by the Court below only on the application filed by the petitioner for setting aside the order by which his suit was dismissed qua defendant No.5 for non-filing of process fee in time. In the impugned order, the Court has only permitted the presence of respondent No.5 for the purpose of contesting the application under Section 5 of the Limitation Act and the case was adjourned for recording the evidence of the petitioner on the issue of condonation of delay which was framed on 11.3.1998.

In view thereof, I do not find any error in the impugned order passed by the Court below. Hence, the present revision petition is hereby dismissed.

12.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE