

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 7756 of 2013 (O&M)
Date of decision: 1.5.2015

Kanchan Lata

.. Petitioner

v.

Ashok Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Suman Jain, Advocate for the petitioner.

Mr. Sunny Saggar, Advocate for respondents No. 1 to 3,
5 and 7.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 12.11.2013, passed by the court below, whereby the application filed by the petitioner for restoration of the suit, which was dismissed in default on 28.8.2009, was dismissed.

The widow of late-Harish Kumar (defendant No. 3 in the court below), who is present in court today and was present on 7.4.2014 as well, stated that she does not want to contest the present litigation.

Learned counsel for the petitioner submitted that the petitioner filed a suit for declaration and joint possession. Parties to the suit are related. The case was adjourned to 28.8.2009 on 8.6.2009, however, the counsel in the trial court wrongly noted the date as 3.9.2009. The case was still at the initial stage. When the case was not found in the cause list on 3.9.2009, application was filed. Ahlmad was directed to trace out the file and put up on 17.11.2009. It was adjourned to 24.12.2009, on which date the Ahlmad reported that the case had been dismissed in default on

28.8.2009. On that very date, application for restoration was filed. The court below has dismissed the same on hyper technical ground that the petitioner mentioned the date fixed as 3.9.2009 and not that it was wrongly noted as 3.9.2009. The non-appearance was not intentional. The bonafides of the petitioner are established from the fact that on the wrong date noted, when the case was not shown in the cause list, application was moved for tracing the file, hence, the order passed by the court below, dismissing the application for restoration of the suit deserves to be set aside.

On the other hand, learned counsel for respondents No. 1 to 3, 5 and 7, submitted that the plea raised by the petitioner was not that she had wrongly noted the date as 3.9.2009, rather, the case set up by her was that the case was not fixed on 28.8.2009 and it was fixed on 3.9.2009, hence, the order dismissing the application does not call for any interference.

Heard learned counsel for the parties and perused the paper book.

A perusal of the file shows that the approach of the court below was quite hyper technical, as a result of which the proceedings in the case were delayed for more than 5 years. The case was dismissed in default on 28.8.2009. As the case set up by the petitioner is that the date noted by her was 3.9.2009 and when it was not shown in the cause list on that date, application was moved for tracing the file. The same remained pending for a period of more than 3 months. It was only on 24.12.2009 that the Ahlmad reported that the case had been dismissed in default on 28.8.2009. On that very date, application for restoration was filed, which was decided by the court below about 4 years thereafter. The aforesaid facts clearly establish that even if the suit was dismissed in default on 28.8.2009, the petitioner was before the court on 3.9.2009 when application was moved for tracing the file. If the petitioner knew that the case had been dismissed in default on 28.8.2009, she could very well file the application for restoration on that date. Merely five days had passed by that time. Under these circumstances, her bonafides cannot be disputed.

For the reasons mentioned above, the petition is allowed. The impugned order dated 12.11.2013, passed by the court below, dismissing

the application for restoration of the suit is set aside. The suit is restored to its original number. The same be now proceeded further.

(Rajesh Bindal)
Judge

1.5.2015
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