

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.788 of 2015(O&M)

Date of Decision:-06.02.2015

Tejvir Singh.

.....Petitioner.

Versus

Pawan Kumar & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Suveer Sheokhand, Advocate for the Petitioner.

JASWANT SINGH, J.(ORAL)

CM No.2828-CII of 2015 is for placing on record the agreement as Annexure P-3.

For the reasons stated in the application duly supported by affidavit of the attorney holder of the petitioner, the application is allowed and the agreement is taken on record as Annexure P-3.

CR No.788 of 2015

Plaintiff is in revision aggrieved against the order dated 17.02.2011 (P-1) passed by the learned Civil Judge(Jr. Divn.), Ludhiana whereby his suit against the defendants except defendant nos1 & 3 has been dismissed for non prosecution. Further challenge is to the order dated 19.01.2015 (P-2) passed by the learned Civil Judge(Jr. Divn.), Ludhiana whereby his application under Order 9 Rule 4 CPC for setting aside the order dated 17.02.2011 (P-1) has been dismissed.

Learned Counsel for the petitioner has argued that in the present case, the petitioner came to know about the order dated 17.02.2011 when his counsel was preparing for final arguments that the suit already stands dismissed for non prosecution against all the defendants except defendant nos.1 & 3 and if the impugned order is not set aside, then the plaintiff/petitioner would suffer irreparable loss which cannot be compensated because the suit is for possession by way of specific performance against the defendants/vendors. Thus prayer was made for setting aside the impugned orders P-1 & P-2. To support his contention learned Counsel for the petitioner has relied upon judgment passed by this Court in **M/s Norata Ram Balkrishan Vs. Basta Singh & Ors. 1985 (1) PLR 230** whereby it has been held that the suit should be restored subsequently on payment of costs if it is proved that the defendant was duly served.

After hearing learned Counsel for the petitioner and perusing the paper book, this Court is of the considered view the present petition is devoid of any merit and same deserves to be dismissed.

In the present case it is apparent that as per the application of the petitioner, he came to know about the order dated 17.02.2011 when his counsel before the trial Court was preparing the matter for final arguments. It is not in dispute that Sh. G.S. Pahwa, Advocate was throughout representing the petitioner-plaintiff during the trial, and in fact it is admitted in para 8 of the present civil revision that his counsel before the trial Court was present on 17.02.2011 when the order of dismissal of the suit against all the defendants except defendant nos.1 & 3 was passed. The said para no.8 is reproduced as under:-

“ That even though the counsel for the petitioner was present on 17.02.2011, when the order of dismissal was passed, but the counsel was under a bona fide impression that the respondents has been proceeded ex-parte. Thereafter also on each and every date the counsel for the petitioner has attended the court proceeding of the suit and has duly represented the petitioner.”

Thus there is a considerable delay of 3 years for filing the application for setting aside the order dated 17.02.2011. No plausible explanation is coming forth as to why the counsel for the petitioner did not come to know about the passing of order dated 17.02.2011 earlier. This fact only leads to one inference that the petitioner/plaintiff had been thoroughly negligent in conducting the case and for his negligence the Court cannot be put to burden of a denovo trial against the remaining respondents/defendants. Under these circumstances, the argument of the learned Counsel for the petitioner that the defendant can be put to heavy costs so as to set aside the order dated 17.02.2011 is not only unjustified but also wholly untenable. Therefore, the judgment relied upon by the counsel for the petitioner is not applicable to the facts and circumstances of the case.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

February 06, 2015
Vinay