

**Sr. No. 118
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No. 8231 of 2015
Date of decision: 04.12.2015**

Balwinder Singh and another

..Petitioners

Versus

Parkash Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Present: Mr. K.R.Dhawan, Advocate,
for the petitioners.

ARUN PALLI, J.(ORAL)

Vide order being assailed dated 17.09.2015, rendered by Civil Judge, (Junior Division), Zira, application moved by the petitioner-plaintiffs for restoration of their suit that was dismissed in default, has since been dismissed. The reasons assigned by the trial Court in support of its order, read as thus:-

“9. Applicant/plaintiff is taking the plea that he was ill because of the reason he could not attend the court proceedings. It was further pleaded by the plaintiffs/applicant that his brother Balwinder Singh took Santokh Singh certain places for sorcery, due to which they could not meet their counsel and about a week ago, from filing of the application i.e. 29.03.2011 they came to know about the dismissal of the suit, to substantiate their claim plaintiff/applicants examined only two witnesses, from which cross-examination of AW2 Manak Singh is very much important, he

admitted that workshop of Balwinder Singh is opposite to his house. Balwinder Singh and Santokh Singh running a workshop opposite the house of AW2 Manak Singh for last 30 years. It was not ever closed by the applicants. Both brothers used to work there and if the reason for not pursuing the case properly is correct, then it would have definitely effect the work of the workshop, as from the cross-examination of AW2 Manak Singh, it is clear that workshop was never closed and if the applicants/plaintiffs were running their workshop during the period of the said years, it leads to presumption that the applicant/plaintiffs could have also pursued his case properly.

10. It is pertinent to mention that both Santokh Singh and Balwinder Singh they were plaintiffs in that case which they are seeking to be restored. If one plaintiff is not well, then other can come on behalf of him and he could have got restored the case. But none plaintiff/applicant tried to pursue its case. So, in these circumstances, I do not find the reasons, stated by the applicants/plaintiffs as satisfactory. Hence, no ground has been made out for restoration of the suit titled as "Balwinder Singh Vs. Parkash Singh". Hence, issue No.1 is decided in favour of the defendants/respondent and against the plaintiff/applicant.

11. Issue No.2 as to maintainable, onus to prove issue No.2 was on the defendants/respondents, the present application is not maintainable as the same is not filed within period of limitation of time. So, issue No.2 is decided in favour of the respondents and against the plaintiff/applicants."

The version set out in the application, moved for restoration of the suit, that prior to the date fixed i.e. 09.12.2009, petitioner-Santokh Singh had fallen ill and his brother Balwinder Singh (petitioner No.1) was also engaged in his treatment, apparently lacks bona fides. For, one of the witnesses examined by the petitioners i.e. Manak Singh (AW2) conceded in his cross-examination that the workshop of the petitioners was right opposite to his house and the petitioners have been running the said workshop for the last 30 years and they never closed their business. Even if it is assumed that one of the petitioners, namely, Santokh Singh had fallen ill but yet petitioner No.2, who too was the plaintiff in the suit, could always appear and pursue his interest. In any case, nothing was brought on record, least any cogent or credible evidence, to prove that Santokh Singh had indeed fallen ill and was not even in a position to move. At the time, when the suit was dismissed for non-prosecution, the suit had reached the stage of recording petitioners' evidence, therefore, they knew that the matter was at crucial stage. For, the petitioners failed to lead any evidence, despite number of opportunities granted, thus, apparently it was by a conscious decision they did not choose to pursue the suit any further. And it is not credible that during one year and four months, after the suit was dismissed for non-prosecution, they did not even contact their counsel to ascertain the status of the suit. Thus, the application moved by the petitioners was an afterthought and just speculative in nature. The application moved by the petitioners lacked both i.e. merits as also the bona fides.

Learned counsel for the petitioners could not point out as to how the conclusion arrived at by the trial Court is either contrary to the position on record or suffered from any material illegality.

That being so, no interference in exercise of revisional jurisdiction, under Article 227 of the Constitution of India, is warranted. The petition being devoid of merit is, accordingly, dismissed.

04.12.2015

vandana

**(ARUN PALLI)
JUDGE**