

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

CR No.4428 of 2003
Date of decision : 19.08.2015

Jaswant Singh

...Petitioner

Versus

Hazoor Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Sanjeev Gupta, Advocate for the petitioner.

Ms. Rajni Bala, Advocate for
Mr. Gurinder Pal Singh, Advocate for respondents (11 to 13)

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the imugned order dated 12.06.2003, whereby application for restoring the suit for declaration has been dismissed under provision of Order 9 Rule 2 of the Code of Civil Procedure.

It would be apt to narrate preface of the matter. The petitioner-plaintiff had filed the suit for declaration i.e. ownership in possession of the land in dispute, which was dismissed by trial Court vide judgment and decree dated 02.02.1999 and appeal preferred against decree was allowed by

the Lower Appellate Court and the matter was remanded back to the trial Court. The parties were directed to appear before trial Court on 11.11.2002. Since no one appeared before trial Court, the suit was accordingly dismissed in default. The petitioner moved an application for restoration of the suit. The same was also dismissed for default vide impugned order. Due reasons assigned in the application prayer for seeking restoration of the suit was sought but no useful purpose served in the application for restoring the suit.

Mr. Sanjeev Gupta, learned counsel appearing on behalf of petitioner submits that other defendants also appeared in suit and suit could not be dismissed under Order 9 Rule 2 CPC for want of process fee. Thus, impugned order is not sustainable.

Ms. Rajni Bala, Advocate for Mr. Gurinder Pal Singh, Advocate for respondent submits that order is fair, legal and justified. There is no illegality and affirmity in the order as the petitioner did not furnish process fee and rightly so the trial Court invoked the provision of Order 9 Rule 2 CPC.

I have heard learned counsel for the parties.

Once remaining defendants were already appearing, there was no occasion for dismissing the suit as per provision under Order 9 Rule 2 of Code of Civil Procedure. The Lower Appellate Court had already remanded back the matter to the trial Court to decide the suit on merits and the suit had already been dismissed for non-prosecution. Even the application for restoration has also been dismissed on the same ground. Such a harsh action upheld by trial Court in my view would not advance justice to the parties to the lis particularly to the petitioner-plaintiff.

In view of what has been observed above, impugned order dated 12.06.2003 is set aside. The application for restoration of the suit is restored back to its original number. Parties as well as their counsels are directed to appear before trial Court on 15.09.2015.

Present petition stands allowed.

19.08.2015

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**(AMIT RAWAL)
JUDGE**