

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

**CR No.170 of 2015 (O&M)
Decided on: 22.09.2016**

Prem Sood

....Petitioner

Versus

Joginder Masih

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. K.S. Rekhi, Advocate
for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against orders dated 29.01.2013 (Annexure P-1) and dated 09.09.2014 (Annexure P-4) passed by the Civil Judge (Jr. Division), Tarn Taran whereby suit filed by the petitioner/plaintiff was dismissed under Order 9 Rule 3 of the Code of Civil Procedure (in short 'CPC') and the application for restoration of the suit was also ordered to be dismissed.

Counsel for the petitioner has submitted that the petitioner filed a suit for specific performance of agreement to sell and had already concluded his evidence. The case was pending for recording evidence of the defendant and the defendant/respondent was given last opportunity subject to payment of costs of Rs.200/- vide order dated 21.01.2013. On 21.01.2013, the case was adjourned to 29.01.2013, the day it was dismissed in absence of counsel for the parties. The present petitioner filed an application for restoration on 31.01.2013 without any delay. It is argued with vehemence that in case the suit is not restored and decided on merits, the entire effort of the petitioner to seek adjudication of his claim on merits would be rendered nugatory more

particularly in the circumstances that the petitioner had been pursuing the proceedings diligently and had already concluded his evidence. It is further argued that in case plea of the petitioner is not accepted, it would amount to putting premium over inaction of the respondent in adducing evidence who further did not bother to contest the present petition or controvert the allegations set up in the petition.

I have heard counsel for the petitioner and perused the paperbook particularly the orders impugned.

Be that as it may, it is an undisputed position of the case that the petitioner instituted the suit for possession by way specific performance of agreement to sell in March, 2009. He has already concluded his evidence long before the case was dismissed for non-prosecution on 29.01.2013. At that time, the case was pending for evidence of the defendant who was allowed last opportunity subject to payment of costs vide order dated 21.01.2013. The application dated 29.01.2013 for restoration of the suit was filed on 02.02.2013. There is nothing on record suggestive of the fact that the petitioner absented from the proceedings intentionally much less with an ulterior motive to achieve. As the petitioner is the plaintiff and has already concluded his evidence, he would not be interested to delay the proceedings. This apart, even if there was some remiss on the part of his counsel before the trial Court for failure to appear on 29.01.2013, may be, due to members of the Bar abstaining from work, the petitioner cannot be put to loss by denying him the right to be heard on merits of the case. In the given facts and circumstances, the order dated 09.09.2013 (Annexure P-4) cannot be allowed to sustain and accordingly set-aside. As a

consequence, the application filed by the petitioner for restoration of the suit is allowed and the suit is ordered to be restored to its original number and stage. The learned trial Court is directed to proceed with the suit, in accordance with law after giving notice to the respondent/defendant.

Disposed of accordingly.

22.09.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No