

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

Civil Revision No.3190 of 2014 (O&M)

Date of decision : 14.09.2016

Smt. Savita Devi

.....Petitioner

Versus

Smt. Geetika Kalha and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. V.S. Rana, Advocate for petitioner.

Mr. Anil Kheterpal, Advocate for respondents No.1 & 2.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 04.12.2013 passed by the learned Additional District Judge, Chandigarh, vide which the application moved by the petitioner for restoration of the main petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called the “Act”) has been dismissed in default under Order 9 Rule 2 of the Code of Civil Procedure, 1908 (hereinafter called the “CPC”).

2. Learned counsel for the petitioner contended that the application has been dismissed on the ground that the copy of the same was not supplied. He contended that that was purely the negligence on the part of the counsel representing the petitioner in the trial Court, for which the petitioner should not be made to suffer. He took to supply the copy of the

application without any loss of time.

3. On the other hand Mr. Anil Kheterpal, Advocate, learned counsel for respondents No.1 & 2 contended that the only intention of the petitioner is to delay the proceedings. He contended that the main petition filed by the petitioner remained pending for five years. Thereafter it was dismissed in default. Then the application was moved for restoration of the said petition. The same was also dismissed under Order 9 Rule 2 CPC vide the impugned order dated 04.12.2013 simply on the ground that the copy of the application was not supplied. Thus, he contended that in case the revision petition is allowed, the petitioner should be burdened with heavy cost and disposal of the application should be made time-bound.

4. I have duly considered the aforesaid contentions.

5. The perusal of the impugned order shows that the application moved by the petitioner for restoration of the objection petition has been dismissed by the learned Additional District Judge, Chandigarh under Order 9 Rule 2 CPC on the ground that in spite of direction the copy of the application was not filed for issuance of the notice to the opposite party despite two opportunities. No doubt the petitioner has neglected in complying with the direction of the Court to supply the copy of the application but at the same time it is settled principle of law that the rights of the parties should be adjudicated upon on merits rather than on technicalities. Generally it is the duty of the counsel to supply the copy of the application/petition, to deposit the process fee and to fulfil the other technical requirements and if the counsel had neglected to perform his

duties, the parties should not be made to suffer. In the instant case also, the negligence on the part of the counsel for the appellant is apparent as despite the directions of the Court he has not supplied even the copy of the application which is supposed to be available with him. So, the petitioner should not be made to suffer for the negligence of his counsel.

6. For the expeditious disposal of the case, suitable direction can be given to the learned trial Court as only application for restoration of the petition is to be disposed of which can be disposed of by obtaining the reply and hearing the arguments. For the inconvenience caused to the respondents, they can be well compensated by way of cost.

7. Thus, keeping in view my aforesaid discussion the present revision petition is hereby allowed. The impugned order dated 04.12.2013 is hereby set aside subject to payment of Rs.10,000/- as costs by the petitioner to the contesting respondents, in addition to Rs.10,000/- already deposited by the petitioner with the Registry. The parties are directed to appear before the trial Court on 26.09.2016. The copy of the application will be supplied to learned counsel for the respondents on that very day or in any case within one month from the date of this order. Thereafter, the application shall be disposed of by the learned Additional District Judge, Chandigarh within a period of three months.

14.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No