

CR-3563-2015

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-3563-2015

Date of decision : 13.01.2016

Kamal Kant

... Petitioner

Versus

Sunil Malik

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Parminder Singh, Advocate
for the petitioner.

Mr. Vinod Kumar, Advocate
for Mr.Harkesh Manuja, Advocate
for the respondent.

REKHA MITTAL. J.(ORAL)

The present petition lays challenge to order dated 07.04.2015 passed by the Civil Judge (Senior Division), Karnal, dismissing the application of the petitioner for restoration of the suit dismissed for non-prosecution on 27.07.2012.

Counsel for the petitioner would urge that the petitioner had already concluded his evidence and the case was fixed for evidence of the respondent. There was a strike by the lawyers at Karnal due to which counsel for the petitioner did not put in appearance on 27.07.2012. The petitioner did not appear in person on that date as he had no information about strike by lawyers. The application for restoration was filed within

the period of limitation but the same has been dismissed by the trial Court without assigning any valid reason. The last submission made by counsel is that a serious prejudice is likely to be caused to the petitioner in case the suit is not restored and decided on merits.

Counsel for the respondent, on the other hand, has supported the impugned order with the submissions that strike by Advocates cannot be construed as a valid ground for non-prosecution of the suit on behalf of the petitioner /plaintiff.

I have heard counsel for the parties and perused the records.

The suit was dismissed in default on 27.07.2012 vide order Annexure P2. Perusal of the order dated 27.07.2012 makes it apparent that there was no representation either on behalf of the petitioner or the respondent-defendant. Counsel for the respondent has not disputed that members of the Bar at Karnal were on strike on 27.07.2012 and for that reason, counsel for both the parties did not put in appearance before the trial Court. The application for restoration was filed within the stipulated period of limitation of 30 days. The learned trial Court has adopted a very casual and pedantic approach while dismissing the application for restoration of the suit without appreciating that rules of procedure are handmade of administration of justice and the same are to be applied to enhance the cause of justice and not to defeat the same. In this view of the matter, the order dated 07.04.2015 impugned in the petition cannot be allowed to sustain and accordingly set aside. As a consequence, the

CR-3563-2015

3

application filed by the petitioner for restoration of the suit dismissed in default is allowed and the suit is ordered to be restored to its original number and stage. No order as to costs.

(REKHA MITTAL)
JUDGE

January 13, 2016.
Davinder Kumar