

Civil Revision No.4397 of 2013 (O&M)

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

C.R.No.4397 of 2013 (O&M)

Date of Decision: July 11, 2016

Karam Chand

...Petitioner

Versus

Smt.Lajwanti & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

**Present: Mr.Naresh Kaushik, Advocate for
Mr.R.S.Mamli, Advocate,
for the petitioner.**

**Mr.Robin Dutt, Advocate,
for respondent No.1.**

AMIT RAWAL, J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order dated 3.12.2010, whereby the application dated 20.5.2010 seeking restoration of the suit for specific performance of the agreement to sell filed, which was dismissed in default on 6.5.2010, was dismissed and the order dated 21.11.2012, whereby the appeal filed against the order dated

3.12.2010 was also dismissed on merit and barred by 15 days of delay.

Mr.Naresh Kaushik, Advocate appearing on behalf of Mr.R.S.Mamli, learned counsel fro the petitioner-plaintiff submits that the suit, aforementioned, was for specific performance of the agreement to sell dated 12.9.2006. No doubt, in the aforementioned suit, issues were framed on 7.6.2007 and it was dismissed after availing several opportunities. His client is willing to conclude the evidence if one opportunity is granted on certain terms and conditions. The application for restoration was filed on 20.5.2010, which was dismissed on 3.12.2010. The appeal was to be filed within 30 days and there was delay of 15 days, which was not intentional but for the reasons stated in the application. The Lower Appellate Court has not considered the balance of equities and rather dismissed the appeal on technical grounds.

Mr.Robin Dutt, learned counsel appearing on behalf of respondent No.1-defendant submits that the conduct of the plaintiff had already been reflected in the order of the Lower Appellate Court. Even while dismissing the ad interim application, the said order was sought to be implemented by taking the assistance of the police. Plaintiff had been callous and lackadaisical in leading the evidence and Court cannot be burdened with the pendency of the suit for infinity and, thus, urges for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised

the paper book and of the view that the facts, noticed above, do envisage callous and tardy approach of the plaintiff, but in order to prevent miscarriage of justice and advance justice, particularly when Mr.Kaushik offered to conclude the evidence in case one opportunity is granted, I deem it appropriate to grant one effective opportunity to the petitioner-plaintiff to conclude the entire evidence subject to payment of ₹10,000/- to be paid to counsel for respondent No.1 in the High Court.

For the foregoing reasons, the impugned orders are set-aside. The suit is restored to its original number.

The parties, through their counsel, are directed to appear before the trial Court on 25.7.2016 and the trial Court shall fix the date for leading evidence and the plaintiff may take the assistance of the Court in summoning the witnesses. No further opportunity shall be granted.

Revision petition stands allowed in the aforementioned terms.

July 11, 2016
ramesh

(AMIT RAWAL)
JUDGE