

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

234

Civil Revision No. 4644 of 2014

Date of Decision: August 22, 2016

AJAY KALIA

-PETITIONER

VS

MEENA KUKREJA & ANR

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Shekhar Verma, Advocate and
Mr.Dushyant Parvesh, Advocate
for the petitioner.

None for respondent No.1.

Mr.Sourabh Goel, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J. (ORAL)

In this revision petition, petitioner has assailed order
dated 13.02.2014 passed by Civil Judge (Sr. Divn.), Faridabad
whereby application for restoration of suit was dismissed.

Learned counsel for the plaintiff-petitioner could not
appear in the Court on 01.03.2011 due to sudden demise of his

brother on 24.02.2011 and he went to Bihar and could come back to Faridabad only on 02.03.2011. Learned counsel for the petitioner had no time to contact with the plaintiff due to cumulative experience, nor he could appear in the Court on 01.03.2011 i.e. the date on which the suit was dismissed in default.

The application for recalling of the order dated 01.03.2011 filed on 03.03.2011 was ultimately dismissed by the trial Court on 13.02.2014.

Learned trial Court while dismissing the application of the petitioner has adverted to the fact that vide order dated 22.02.2011, the case was adjourned for affixing the ad valorem court fee as required on the correct valuation of the suit.

The trial Court in its order observed that learned counsel for the petitioner avoided the proceedings in order to escape payment of required court fee and his absence was treated to be deliberate attempt in his continued effort to escape

liability from payment of court fee. The case was accordingly adjourned for 01.03.2011.

On 01.03.2011, none appeared for the plaintiff and suit was dismissed under Order 9 Rule 8 CPC. The non-appearance on 01.03.2011 has been claimed to be on account of the reasons as mentioned above. In the affidavit of Chandra Mani Kumar, Advocate for the plaintiff filed before this Court, reference has been made to the FIR No.02/11 dated 24.02.2011 lodged in Bihar in connection to the suicidal death of the brother of the deponent.

In the present revision petition, pursuant to notice of motion issued on 21.07.2014, both the respondents were duly served and were represented by their learned counsel as per order dated 10.10.2014. Thereafter, on some occasions, respondent No.1 was represented by her counsel on 07.08.2015 but thereafter, on 15.01.2016, 17.02.2016, 30.03.2016 and 05.05.2016, none appeared on behalf of respondent No.1. Even

today, none has caused appearance on behalf of respondent No.1.

Learned counsel for the petitioner craves indulgence of this Court for setting aside the order dismissing the suit in default as well as the impugned order vide which application for restoration of the suit was also dismissed. He showed his willingness to pay the requisite court fee forthwith on restoration of the suit.

I am of the considered view that default of the learned counsel for the plaintiff should not come in the way of decision of the suit on merits. The substantial cause of justice should not be allowed to suffer on these mere technicalities as the learned counsel for the plaintiff was sufficiently prevented from appearance in the Court on 01.03.2011.

In view of aforesaid, the present revision petition is allowed. Impugned order dated 13.02.2014 passed by Civil Judge (Sr. Divn), Faridabad is hereby quashed. The resultant

order dated 01.03.2011 is also quashed. Both the parties will appear before the trial Court on 19.09.2016.

Learned counsel for the petitioner undertakes to make payment of ad valorem court fee within one week from the date of appearance before the trial Court.

Disposed of.

22.08.2016

jjyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No