

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

**CR No.5117 of 2013
Decided on: 05.10.2016**

Market Committee, Amritsar through its Secretary

....Petitioner

Versus

S. Amrik Singh Shergill and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. P.K.S. Gill, Advocate
for the petitioner.

Mr. Ajaivir Singh, Advocate
for the respondents.

REKHA MITTAL, J.

The present petition directs challenge against order dated 23.05.2013 (Annexure P1) passed by the Additional Civil Judge (Sr. Division) Amritsar whereby application for restoration of suit dismissed in default, has been dismissed.

Counsel for the petitioner has submitted that as the application for restoration of application dismissed in default was filed on 16.02.2011 just two days after the proceedings culminated in order dated 14.02.2011, it is sufficient to show that absence of counsel for the applicant on 14.02.2011 was not intentional much less *mala fide*. Another submission made by counsel is that in case the impugned order is not set-aside, the entire effort of the petitioner in pursuing the proceedings since 2006 would be rendered nugatory and the petitioner would not be able to seek adjudication of its claim on merits. The last submission made by counsel is that rules of procedure are handmaid of administration of justice and the same are to be applied to enhance its

cause and not to scuttle it.

Counsel for the respondents, on the contrary, has supported the impugned order with the submission that earlier the suit was dismissed in default and now the application for restoration of the application was also dismissed for non-prosecution, sufficient to reflect upon lackadaisical conduct of the petitioner.

I have heard counsel for the parties, perused the paperbook and the records of the Court below.

The application for restoration of the suit dismissed in default on 30.11.2006 was filed on 04.12.2006 and the same remained pending for more than 4 years and was adjourned more than 25 times before the proceedings culminated in order dated 14.02.2011. Perusal of the records would evident that all these years, the petitioner was being represented by a counsel who had been attending the proceedings without any default. On 14.02.2011, there was no representation on behalf of the parties resulting in dismissal of the application under Order 9 Rule 3 CPC. The very fact that the petitioner had been pursuing the application for more than 4 years and filed the instant application for restoration of the application immediately after its dismissal, it substantiates contention of the petitioner that absence of its counsel was not intentional much less *mala fide*. As per the settled position in law, the parties must get fair opportunity to be heard on merits of the case before being made to suffer. The learned trial Court adopted a very pendantic approach while dismissing the application. In the given facts and circumstances, the order impugned cannot be allowed to sustain and is accordingly set-aside.

For the foregoing reasons, the petition is allowed, the impugned order dated 23.05.2013 is set-aside subject however to deposit Rs.5,000/- with the Legal Services Authority, Amritsar. As a natural consequence, the application filed by the petitioner for restoration of the suit is restored to its original stage and number with a direction to the trial Court to proceed with the case, in accordance with law. The parties through their counsel are directed to appear before the trial Court on 27.10.2016. The trial Court is directed to dispose of the application for restoration of the suit dismissed in default within a period of three months from the parties putting in appearance. On failure of the petitioner to deposit the costs on or before 27.10.2016, the petition shall be deemed to be dismissed.

05.10.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No