

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

CR No.5241 of 2016(O&M)

Date of decision:17.8.2016

Janga Singh

....Petitioner

VERSUS

Hargopal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Poonam Verma, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 01.02.2016 (wrongly mentioned as order dated 20.07.2015 in the head-note of the petition) whereby suit for recovery filed by the respondent/plaintiff has been ordered to be restored.

Counsel for the petitioner has submitted that suit of the plaintiff/respondent was dismissed under Order 9 Rule 8 of the Code of Civil Procedure, 1908 vide order dated 20.07.2015. The application for restoration was filed on 28.07.2015 without justifying failure of the respondent/plaintiff or his counsel to appear before the Court on 20.07.2015. It is further argued that the trial Court has not taken into consideration averments raised in reply to the application filed by the petitioner, therefore, the impugned order is liable to be set aside.

I have heard counsel for the petitioner, perused the paper-book particularly the annexures appended with the petition.

The respondent/plaintiff has filed a suit for recovery of Rs.2,23,200/- with interest on the basis of pronote and receipt dated

10.12.2004. The petitioner/defendant had put in appearance in the proceedings and the case was pending for filing of written statement on 20.07.2015, the day the same was dismissed in presence of counsel for the petitioner/defendant. The respondent/plaintiff filed the application (Annexure P-3) for restoration of the suit and in para 3 of the application, it has categorically been averred that on 20.07.2015, the next date of hearing was given as 28.07.2015 for filing written statement but when the plaintiff came to the Court on the said day, the case was not listed in the cause list and on inquiry he came to know that the case was dismissed in default on 20.07.2015.

In view of the fact that the respondent/plaintiff filed the application for restoration of the suit at the first available opportunity coupled with the principles of natural justice that every endeavor should be made to decide the contesting claims on merits, I do not find any reason to interfere in the discretion exercised by the trial Court in restoring the suit for its decision on merits.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

AUGUST 17, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no