

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

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CR No. 5950 of 2015

Date of Decision: October 21, 2016

MOHAN LAL

-PETITIONER

VERSUS

PARKASH CHANDER & ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.J.P.Sharma, Advocate
for the petitioner.

Mr.Sandeep Kumar Yadav, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

In this revision petition, petitioner has challenged order dated 30.04.2015 passed by Additional District Judge, Narnaul whereby application for restoration of the appeal was dismissed on account of not making good deficiency in Court fee as per order dated 19.08.2009 and order dated 07.09.2009 passed by the lower Appellate Court.

Petitioner is a judgment debtor in a suit for specific performance which was decreed vide judgment and decree dated 17.05.2005.

Vide order dated 19.08.2009 passed by Additional District Judge, Narnaul, an application for being declared as indigent person was dismissed and the judgment

debtor/petitioner was directed to affix requisite Court fee within a period of 10 days from the date of passing of the order dated 19.08.2009. 29.08.2009 was the date fixed before the Additional District Judge, Narnaul, on which date the Presiding Officer was not holding the Court. The case was accordingly adjourned for 07.09.2009.

Learned counsel for the petitioner contended that on 07.09.2009, the petitioner was available with requisite Court fee but he could not produce the same before the lower Appellate Court in time before the order was pronounced. On the same date, an application was moved before the lower Appellate Court for restoration and re-admission of appeal. The lower Appellate Court has passed the impugned order on the said application after framing necessary issues on 25.01.2011.

Issue No.2 has been decided in favour of the petitioner, finding that the petitioner had purchased the Court fee of Rs.10,770/- on 07.09.2009, however, due to non-compliance of order dated 19.08.2009 and in view of order dated 07.09.2009, the application was ultimately dismissed.

I have heard learned counsel for both the parties.

It is true that there was some omission on the part of the judgment debtor/petitioner in not affixing the Court fee within the stipulated time granted by the lower Appellate Court. It is

also correct that on the adjourned date, i.e. 29.08.2009, the Presiding Officer was on leave and the case was further adjourned to 07.09.2009.

It was also conceded position even in terms of findings recorded under issue No.2 that the petitioner/judgment debtor had purchased requisite Court fee on 07.09.2009 itself. Though the Court becomes functus officio only after pronouncement of the order but keeping in view the attending circumstances of the case, in my considered opinion, an opportunity needs to be given to the petitioner/judgment debtor to get decision on his appeal on merits.

The technicality of the present kind cannot overreach the cause of justice. Substantial cause of justice cannot be sacrificed at the very threshold of technicality. The omission on the part of the petitioner can best be met by imposing adequate costs.

In view of aforesaid, this revision petition is allowed. Petitioner is allowed to produce the requisite Court fee on the memorandum of appeal before the lower Appellate Court within seven days from the date of receipt of certified copy of this order. On receipt of such Court fee, lower Appellate Court shall proceed to decide the appeal on merits preferably within a period of four months, however, subject to payment of Rs.5000/-

as costs payable to the respondents.

Payment of costs shall be the condition precedent for granting indulgence by the lower Appellate Court.

Disposed of.

**(RAJ MOHAN SINGH)
JUDGE**

October 21, 2016

jyoti Y.

***Whether speaking/reasoned
Whether reportable***

***Yes/No
Yes/No***