

...

218

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6329-2015

Date of Decision : May 18th, 2016

Gurdev Singh [deceased] through LRs and another

.... Petitioners

Versus

Gurmail Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. S.S.Rangi, Advocate,
for the petitioners.

Mr. Deepak Aggarwal, Advocate,
for respondents No. 1 to 5.

Mr. H.P.S. Ghuman, Advocate,
for respondent No.6.

Mr. B.S.Sra, Addl. A.G. Punjab,
for respondents No. 7 and 8.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 3.8.2015 [Annexure P/6] passed by Additional District Judge, Patiala whereby appeal filed against the order dated 15.4.2014 [Annexure P/5] vide which Civil Judge [Junior Division], Nabha had dismissed the application of the petitioners for restoration of the suit, was dismissed.

2. Learned counsel for the petitioner submitted that the suit filed by

...

the petitioners was dismissed in default by the Court of first instance vide orders dated 2.2.2009. There was some delay in filing the application for restoration of the suit on the ground that the circumstances were beyond the control of the petitioners. In fact, their counsel had informed that the suit as well as contempt petition were fixed for 17.2.2009. On that day, the petitioners put in appearance before the Court below, but their case was not listed. Their counsel, namely, Mr. Harwinder Singh, Advocate had gone abroad and the petitioners came to know that their suit was dismissed in default on 2.2.2009 without there-being any fault on their part.

3. The said application was contested on the ground that such a plea that counsel had not informed the petitioners, was no ground for condonation of delay and prayed that the application be dismissed.

4. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance declined the request for condonation of delay and the application was dismissed. The appeal filed before the Court of first Appeal was also dismissed vide impugned order dated 3.8.2015.

5. Learned counsel for the petitioners also submitted that both the Courts below have completely ignored the facts that the circumstances were beyond the control of the petitioners and there was no reason for declining the request for condonation of delay and on that count, the impugned orders are liable to be set-aside. On this point, reliance was placed upon a decision of Co-ordinate Bench of this in **Ghanshyam Dass Vs. Kamal Kishore and another**, 2011(3) RCR [Civil] 846, wherein, this Court had taken a view that while deciding such applications for restoration

...

and condonation of delay, the Courts must take a lenient view.

6. Learned counsel for the respondents submitted that both the Courts below have already dealt with the matter while appreciating the entire evidence and there was no justifiable ground for condonation of delay and the passing of order dated 2.2.2009 was well within the knowledge of the petitioners.

7. Having considered the submissions made by learned counsel for the parties and after going through the file, this Court is of the considered view that for condonation of delay, the party is required to make out a case to the extent that there was any genuine cause for his failure to appear in the Court on the date fixed. In the present case, there was obviously no reason for the petitioners not to appear before the Court on the date fixed since they had been vigorously pursuing their litigation. No strict evidence can be led in this regard to establish that the counsel for the petitioners had gone abroad and in fact, had not intimated to the present petitioners about the date fixed. The Courts below should have taken liberal approach while deciding such a request for condonation of delay. Otherwise also, it is settled proposition of law that the case should be decided on merits rather than to decide the same on hyper-technical grounds. Such a view was taken by Hon`ble Allahabad High Court in **Smt. Sudesh & Ors. Vs. Addl. Distt. Judge & Ors., 2006(4) CivCC 142**, wherein it has been held that endeavour of the Courts of law should be to decide the case on merits after giving sufficient opportunity to the parties and hearing them rather than to decide the same *ex parte*. It is also settled that a party cannot be made to suffer because of some lapse on the part of his counsel. Such a view was taken by this Court in **Balkar Singh Gill and another Vs. Dr. R.S.Grewal**

...

and Ors., 2014 (1) Law Herald [P&H] 38.

8. In view of the above, the impugned order dated dated 3.8.2015 [Annexure P/6] passed by Additional District Judge, Patiala and the order dated 15.4.2014 [Annexure P/5] of Civil Judge [Junior Division], Nabha are set-aside and the suit is restored to its original number.

9. The present revision petition stands allowed.

**(SHEKHER DHAWAN)
JUDGE**

May 18th, 2016
som