

Civil Revision No.1114 of 2002

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

Civil Revision No.1114 of 2002 (O&M)

Date of decision:13.01.2016

Samad Baba Garib Nath Saraswati Tirath, Pehowa and another
....Petitioners

Versus

Shanti Devi (deceased) through LRs and others
....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

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

Present: - Mr. A.K. Jain, Advocate, for the petitioners.
Mr. J.P. Dhull, Advocate, for the respondents.

PARAMJEET SINGH DHALIWAL,J.

Instant revision petition has been filed for quashing the order dated 28.07.2000 passed by learned Civil Judge (Senior Division), Pehowa and the order dated 13.10.2001 passed by learned Additional District Judge, Kurukshetra, whereby the application moved by the petitioner-plaintiff for restoration of the suit dismissed in default, has been dismissed.

Brief facts of the case are that petitioner filed a suit for declaration challenging the orders of correction of khasra girdawri proceedings and also for permanent injunction. The said suit was at the stage of replication. On 03.02.1997 nobody put in appearance on behalf

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of the petitioner and suit was dismissed in default. On 10.03.1997 petitioner moved an application for restoration of the suit. The said application was dismissed by learned Civil Judge (Senior Division), Pehowa, vide order dated 28.07.2000. Against the order dated 28.07.2000, petitioner preferred appeal, which has been dismissed by learned Additional District Judge, Kurukshetra. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Admittedly, the application for restoration of the suit was filed within 35 days from the date of dismissal of the suit in default. But the Courts below dismissed the application on the ground that detailed reasons have not been mentioned in the application as to what were those unavoidable circumstances which resulted in non-appearance. It is common practice that if the application is filed within 30 days, no strict proof is required for non-appearance of the parties. It is common practice that pleadings in the Mufsal Courts are loosely drafted. Parties are not well-versed in drafting the pleadings. This Court is of the opinion that both the Courts below appear to have taken a hypertechnical approach. Since the petitioner-plaintiff as well as his counsel were not there, the case was fixed for replication. The petitioner would not gain anything for non-appearance. Parties rely upon the counsel. In case both do not appear atleast some notice is required to be given.

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In view of the above and in the interest of justice, revision petition is allowed. Impugned orders are set aside and civil suit is ordered to be restored to its original number subject to costs of Rs.30,000/-, out of which Rs.25,000/- shall be deposited with the Haryana State Legal Services Authority and Rs.5,000/- shall be paid to the respondents. Parties through their counsel are directed to appear before the learned Civil Judge (Senior Division), Pehowa, on 23.02.2016.

(Paramjeet Singh Dhaliwal)
Judge

January 13, 2016
R.S.