

CR No.6865 of 2011

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

CR No.6865 of 2011

Date of decision:20.05.2016

Smt. Shanti Devi

... Petitioner

Vs.

Nand Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Ajay Jain, Advocate
for the petitioner.

Mr. S.K. Yadav, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Petitioner-plaintiff and appellant before the Lower Appellate Court is aggrieved of the impugned order dated 05.09.2011 (Annexure P-6), whereby, an application seeking restoration of the appeal in pursuance to the order dated 27.07.2007 passed by this Court in RSA No.2082 of 1996, has been dismissed.

Mr. Ajay Jain, learned counsel appearing on behalf of the petitioner-plaintiff submits that suit for possession on the basis of the pre-emption being co-sharers, was dismissed in default on 3.10.1991 and the appeal was also dismissed, vide judgment and decree dated 01.05.1996. The aforementioned judgment and decree was assailed before this Court, vide Regular Second Appeal bearing No.2082 of 1996 which has been allowed

by giving direction to the First Appellate Court to decide the appeal on merits after hearing both the parties in accordance with law, within a period of six months. Both the parties were directed to appear before the First Appellate Court on 28.08.2007. On the said date, neither the petitioner nor his counsel appeared on the said date. Instead of issuing notice, dismissed the appeal in default on 28.08.2007. Application dated 18.09.2007 registered on 27.09.2007 seeking restoration of the appeal was filed which has erroneously been dismissed. It is a matter of record that thereafter, an application for enlargement of time was filed which has been dismissed after 4 years and thus, urges this Court for setting aside of the impugned order dated 05.09.2011 (Annexure P-6).

Mr. S.K. Yadav, learned counsel appearing on behalf of the respondents submits that order seeking enlargement of time had attained finality and therefore, the present revision petition is not maintainable. Even otherwise, no explanation has come forth in not adhering to the directions contained in the order dated 27.07.2007. The factum of remand and appearance was within the knowledge of the petitioner-plaintiff. He could have appeared in person instead of through counsel, having no means to seek time for addressing arguments, as appeal was to be decided within a period of six months and thus, urges this Court for affirming of the impugned order.

I have heard learned counsel for the parties and appraised the paper book and of the view that all the facts noticed above leave to irresistible conclusion that an application for restoration of the appeal was

filed within a period of 30 days, i.e., on 18.09.2007 and registered on 27.09.2007. I am of the view that Lower Appellate Court ought not to have dismissed the appeal in default on the very first date, at the best, it could have issued notice to the party as appeal was to be decided within a period of six months. In my view, dismissal of the appeal in default in utter haste, cannot be strictly construed in defiance of the direction, as the direction was issued only to appear before the First Appellate Court. The First Appellate Court ought to have noticed the order dated 27.07.2007 passed by this Court in RSA No.2082 of 1996 by taking into consideration the decision of the appeal and not in isolation. Even otherwise, period of 04 years has been consumed in deciding the simpliciter application for restoration. The Court could have called upon the parties to address arguments on the appeal instead of pondering upon the application.

For the foregoing reasons, I am of the view that impugned order is not sustainable in the eyes of law and same is hereby set aside and the appeal is restored to its original number.

Parties through their counsel are directed to appear before the First Appellate Court on 15.07.2016.

Revision petition stands allowed.

Lower Appellate Court shall make endeavour to decide the appeal as expeditiously as possible preferably within a period of three months.

(AMIT RAWAL)
JUDGE

May 20, 2016
savita