

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

**CR No.7307 of 2016
Date of Decision-27.10.2016**

Inderjit and another	... Petitioners
Versus	
Balwan Singh and others	... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Deepak Girotra, Advocate for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 03.09.2016 passed by Civil Judge (Senior Division), Rohtak vide which application under Order 9 Rule 9 read with Section 151 CPC was allowed.

[2]. Plaintiff-respondent No.1-Balwan Singh filed a suit for specific performance with a consequential relief of permanent injunction on the basis of agreement to sell dated 19.09.2011.

[3]. Plaintiff-respondent No.1 paid the whole sale consideration i.e. an amount of Rs.5 lacs to the petitioners in the presence of witnesses. At the time of filing of the suit, *ad valorem* court fee to the tune of Rs.31,300/- was filed along with the plaint.

[4]. The suit was dismissed for non-prosecution on 26.11.2013 when learned counsel for the plaintiff did not appear in the case. An application under Order 9 Rule 9 read with Section 151 CPC was filed for restoration of the suit by plaintiff-respondent No.1 on the ground that at the time of filing of the suit, plaintiff engaged

one Sh. Raj Pal Khatri, Advocate who told the plaintiff not to come in Court on every occasion except when his presence would be required. It was alleged that learned counsel did not inform the plaintiff for his appearance in the Court, nor inform about the dismissal of the suit in default. On inquiry on 26.08.2014, plaintiff-respondent No.1 came to know about the dismissal of the suit in default on 26.11.2013. After acquiring knowledge about the dismissal of the suit, the application for restoration of the suit was filed.

[5]. The application was contested by the defendants on the ground that the application was not *bona fide* and the same was beyond the period of limitation. No separate application for condonation of delay was filed.

[6]. Trial Court in its equitable jurisdiction accepted the condonation of plaintiff-respondent No.1 on the premise that the plaintiff having paid the entire sale consideration of Rs.5 lacs and having affixed *ad valorem* court fee to the tune of Rs.31,300/- would not be benefitted by any manner by delaying the same and by getting the same dismissed for non-prosecution. While exercising equitable jurisdiction, trial Court found that the application dated 10.09.2014 filed by plaintiff-respondent No.1 for restoration of the suit from the date of knowledge on 20.08.2014 was within limitation, therefore a *bona fide* and sufficient cause was found to have existed for restoration of the suit.

[7]. Trial Court has taken pragmatic approach based on facts and circumstances of the case. Cause of justice should not be thrown at the threshold of technicalities. Filing of application from the date of knowledge was rightly considered to be a sufficient cause for restoration of the suit to which no limitation was attracted. Trial Court has rightly restored the suit, however this Court is of considered opinion that the suit should have been restored against some sufficient cost. An amount of Rs.10,000/- would be just and appropriate to meet out the exigency in view of lapse on the part of plaintiff. There was some omission on the part of the plaintiff in not attending the Court thereby leaving the entire thing on the Advocate who in turn did not inform the plaintiff even after dismissal of the suit for non-prosecution on 26.11.2013. It was not the case of the plaintiff that he came to know about dismissal of the suit in default from the office of the Advocate. The source of acquiring knowledge was not brought on record. Even though there was omission on the part of the plaintiff, the said omission may best be equated with an amount of Rs.10,000/- as costs payable to the defendants-petitioners.

[8]. In view of nature of order which this Court proposes to pass at this stage it would be just and appropriate not to summon the respondents as it would incur more expenses by the respondents and the purpose of enhancing the cost would be frustrated. The cost of Rs.1000/- as ordered by the trial Court is hereby increased to Rs.10,000/-.

[9]. Impugned order dated 03.09.2016 passed by Civil Judge (Senior Division), Rohtak is upheld on merits with modification of costs as ordered hereinabove.

(RAJ MOHAN SINGH)
JUDGE

27.10.2016
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No