

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

CR No.7417 of 2014

Date of decision : 16.03.2016

Surjit Singh and others

...Petitioners

Versus

Inderpal Singh

...Respondent

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. S.S. Swaich, Advocate for the petitioners.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. B.B.S. Randhawa, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The petitioner-plaintiff is aggrieved of the order dated 04.10.2011 (Annexure P-8), whereby application seeking restoration of the suit has been dismissed as well as order dated 18.09.2014 passed by the lower Appellate Court.

Mr. Swaich, learned counsel appearing on behalf of petitioners-plaintiffs submits that against the order dated 04.10.2011 (Annexure P-8), the petitioner has filed revision petition in this Court vide CR No.7597 of 2011 and the same was dismissed as withdrawn by observing that order

under challenge is appealable. Accordingly, appeal was filed which has been dismissed vide impugned order dated 18.09.2014 (Annexure P-10) by observing that appeal is not maintainable. It is in these circumstances delay has occurred. He further submits that suit is for joint possession in equal share i.e. 1/3 share in the estate of Dalip Kaur being half share of land measuring 201 kanal 7 marla as mentioned in the suit, filed on the basis of the registered Will. Evidence of the plaintiff was closed on 21.09.1994. Defendant No.1 was sued through mother Gurjit Kaur. An application was filed for removing the mother as guardian but the same was declined. Thereafter, mother herself filed application for appointment of a new guardian which was allowed. Accordingly, new guardian was appointed. On appointment of new guardian, an application was filed for filing fresh written statement in the year 1997. The said application was allowed vide order dated 15.11.1997, which was challenged by filing revision petition in this Court and the revision petition was disposed of with a direction at the best amended written statement can be filed. The application seeking amendment of the written statement was filed but it was rejected. Against the same, guardian of the defendant No.1 filed the revision No.2484 of 2001 which was decided on 17.5.2003 (Annexure P-4) and the amendment in the written statement was ordered to be taken on record. The next date of hearing before the trial Court was 14.06.2003 and it was adjourned to 07.08.2003 for filing replication to the amended written statement. The order of 14.06.2003 reflected only presence of the counsel for the respondents. On 07.08.2003, counsel did not file replication to the amended written statement but sought short accommodation as his client did not

contact him. The matter was adjourned to 21.08.2003. On 21.08.2003, no PW was present and the matter was adjourned to 04.09.2003 as owing to the amendment of the written statement, Issue No.5-A as additional issue was framed. On 04.09.2003, evidence of the plaintiff was closed in affirmative and matter was adjourned to 13.09.2003 for filing of the documents as well as for the Dws. On 13.09.2003, no one was present neither plaintiff nor defendants. The case was called several times and it was dismissed as per provisions of Order 9 Rule 3 CPC. It is in these circumstances, the aforementioned appeal was filed, but the same has been dismissed. The trial Court dismissed the application on the ground that no explanation has come forth in not moving the application within a period prescribed under Article 122 of the Limitation Act as the application was filed on 30.03.2005 whereas in the application it has been mentioned that on acquiring the knowledge in the month of March 2005, application was filed. He further submits that no prejudice shall be done and since none of the parties were present, it is sufficient ground for restoration of the suit and thus prays for setting aside of the order.

Mr. Kanwaljit Singh, Ld. Sr. Counsel assisted by Mr. B.B.S. Randhawa, learned counsel for the respondent submits that in the cross-examination, the plaintiff admitted that on the date when the suit was dismissed in default, he did not attend the proceedings of the Court, but attended the office of the counsel. In fact, he was aware of the dismissal of the suit under Order 9 Rule 3 CPC and remained silent for 1 ½ year and filed application in March, 2005. All the zimni orders shows that plaintiff adopted delaying tactics before the trial Court and rightly so, application for

restoration of the suit, has been dismissed. Valuable right has accrued in favour of defendants which cannot be taken as much time has lapsed during the interregnum and thus prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book.

On going through the facts noticed above and as well as statement, much less, contents of the application (Annexure P-6) seeking restoration of the suit, I am of the view that though plaintiff had been very callous and pleadings are wanting, in essence, are not happily worded, but the fact remains that suit should not be permitted to be thrown in the manner it has been done, for the reasons, that the plaintiff had completed evidence on 21.09.1994. It was only after the amendment of the written statement that the suit was dismissed in default, therefore, opportunity is required to be given to the parties to lead evidence because additional issues as noticed above had been framed. Though appeal was against the dismissal of the application for restoration of the suit, but as per provision of Order 43 Rule 1 of the Code of Civil Procedure, there is no provision of appeal yet the appeal was filed, therefore delay is liable to be condoned.

Application seeking restoration is signed by the petitioner and is supported by an affidavit. The zimni order of 13.09.2003 reveals that no one was present, in my view, it is valid ground for restoration of the suit. Keeping in view the conduct of the petitioner, I deem it appropriate to impose a cost of ₹25,000/- as application seeking condonation of delay is lacking particulars.

Accordingly, impugned order is set aside. Revision petition is

allowed.

Suit is restored to its original number.

Parties are directed to appear before the trial Court on
21.04.2016.

It is made clear that cost shall be condition precedent.

16.03.2016

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**(AMIT RAWAL)
JUDGE**