

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.7844 of 2015

Date of Decision.19.01.2016

Smt. Nishi Bhargava

.....Petitioner

Vs.

Gyaneshwar Bhargava

.....Respondent

Present: Mr. S.S. Khaira, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of 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?

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K. KANNAN J. (ORAL)

1. A suit which was dismissed under Order 9 Rule 3 CPC was restored on an application filed by a counsel setting out the reasons for absence. The Court has allowed the application. The application was filed by the respondent objecting to the order on the plea that the petition for restoration filed was not supported by an affidavit and the other objection was that the counsel whose absence on the particular day was said to be the cause for dismissal was not even a counsel on record. According to the petitioner, the plaintiff has misled the Court and has obtained an order of restoration.

2. First of all, I find nothing particularly wrong about the petition for restoration being filed without an affidavit to support it since Order 9 Rule 4 CPC itself does not contemplate that the petition should be supported by an affidavit. The plea that the person whose absence was responsible for the dismissal was not even a counsel on record need

not be taken as very serious lapse, for it is always prevalent practice that a counsel makes representation on behalf of some other counsel or the person who is stated to be counsel on record is literally holding the brief for somebody else. These are small issues and if the suit has not come up for trial and it was dismissed at a preliminary stage, the Court has every discretion to relax all these rules of procedure or matters of practice and allow for restoration of the suit to be made. If such restoration is made by the trial Court and affirmed by the Appellate Court, I will find no extraordinary illegality for an interference in the revision petition.

3. The revision petition is dismissed.

(K. KANNAN)
JUDGE

January 19, 2016
Pankaj*