

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

**CR No.1325 of 2015(O&M)
Date of Decision: 21.08.2017**

Prakash Kaur deceased through LRs. Sohan Singh and
others

.....Petitioners

Versus

Shinder Pal and others

... Respondents

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

Present:Mr. G.S. Brar, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. It appears from the record that vide order dated 21.03.2016 passed by the Co-ordinate Bench, it was ordered that in the event of failure on the part of the petitioners to furnish correct address of respondent No.6, the petition qua respondent No.6 shall be dismissed. As a consequence of non-compliance of the order, the revision against respondent No.6 was dismissed vide order dated 26.08.2016. However, on the adjourned date, learned counsel for the petitioner did not appear and the order dated 18.01.2017 came to be passed for furnishing of correct address of respondent No.6 within stipulated period. Since the revision qua respondent No.6 has already been dismissed, there is no necessity of serving the said respondent afresh.

[2]. Petitioners have assailed the order dated 11.07.2014 passed by the Additional Civil Judge (Senior Division), Phillaur, vide which application under Order 9 Rule 9 CPC for restoration of the suit/application as indigent persons was dismissed.

[3]. Petitioners filed a suit along with an application as indigent persons for recovery of Rs.44,69,539/- as compensation from defendants No.1 to 5.

[4]. Defendants No.1 to 5 along with one another person caused injuries resulting in murder of Balbir Chand and Mohan Lal of village Mansurpur, Tehsil Phillaur and they caused injuries to plaintiffs No.1, 2 and 6.

[5]. The suit was contested by defendants No.2 to 4 by denying the version of the plaintiffs/petitioners. As per pleadings made in the revision petition, defendant No.5 was proceeded against *ex parte* vide order dated 29.11.2002. Defendant No.6 was proceeded against *ex parte* on 27.05.2003 and defendant No.4 was proceeded against *ex parte* on 30.07.2003. Thereafter, defendants No.1 to 3 were also proceeded against *ex parte* vide order dated 09.12.2003. In this way, the case was fixed for *ex parte* evidence of the plaintiffs for 11.12.2003.

[6]. Plaintiff No.1 could not appear due to her ill health and plaintiff No.6 was out of station on the day on which the same was dismissed under Order 9 Rule 8 CPC by the trial Court vide

order dated 16.05.2007. Thereafter, plaintiffs moved an application under Order 9 Rule 9 CPC for restoration of the suit along with application for condonation of delay on the ground that plaintiff No.1/Prakash Kaur could not appear in the suit/application on 16.05.2007 as she was almost confined to bed since March 2007 because of chronic bronchitis and low blood pressure. She remained under treatment of Doctor throughout and the Doctor advised her to take complete bed rest. Plaintiff No.1 herself on behalf of minor plaintiffs No.2 to 5 could not represent the cause of the plaintiffs as guardian. On 24.02.2009, after recovery from ailment, Prakash Kaur (plaintiff No.1) and Prem Singh (plaintiff No.6) contacted their counsel and came to know that the suit/application was dismissed on 16.05.2007 due to absence of the plaintiffs and their counsel.

[7]. Plaintiffs acquired knowledge on 24.02.2009 and the application for restoration came to be filed on 24.02.2009 itself. Vide order dated 04.02.2011, defence of respondents No.1 to 5 was struck off for want of written statement and the case was adjourned to 04.05.2011. Thereafter, issues were framed and the trial Court dismissed the application for restoration vide order dated 11.07.2014.

[8]. Petitioners have assailed the order dated 11.07.2014 on the ground that plaintiff No.1 was an old lady and plaintiffs

No.2 to 5 were being represented by her as guardian. Plaintiff No.6 was out of station on the date when the suit was dismissed for non-prosecution. Plaintiff No.1 died on 20.12.2013 i.e. before passing of the impugned order dated 11.07.2014. The defence of the defendants had already been struck off vide order dated 04.02.2011 and in spite of that, the application for restoration of the suit was dismissed by the trial Court.

[9]. It is a settled principle of law that the meritorious matter should not be thrown at the verge of technicalities. The dismissal of the suit under Order 9 Rule 8 CPC would debar filing of the fresh suit, therefore, all the issues are to be decided in the proceedings for restoration of the suit as there would be no opportunity to file fresh suit on the same cause of action at the instance of the plaintiffs at a subsequent stage. Plaintiff No.1 was confined to bed and ultimately died before passing of the impugned order. Cause of minor plaintiffs No.2 to 5 was being represented by plaintiff No.1. There may be some delay/omission in filing the application for restoration, but in my considered opinion, procedure made has to be relaxed in order to give opportunity to the plaintiff to contest the suit on merits. For the latch shown by the plaintiffs, defendants can best be compensated with some adequate cost. The petition/application filed by the plaintiffs was dismissed under Order 9 Rule 8 CPC

on 16.05.2017.

[10]. The filing of application for restoration may be on delayed note, but in view of the fact that Prem Singh appeared as AW1 and Kamaljit Singh, Clerk of the Advocate has been examined as AW 2, the delay in filing the application has been explained. Plaintiff No.1 being an old lady could not appear in the witness box to prove her illness with reference to any medical record.

[11]. In my considered opinion, plaintiff No.1 was ailing and ultimately died before passing of the impugned order can be treated to be ailing to that intensity as she was sufficiently prevented from appearing in the Court due to ailment, which ultimately resulted in her death.

[12]. Taking into entirety of facts and circumstances of the case, in my opinion, the order dated 11.07.2014 needs to be set aside in order to give fair chance to the plaintiffs to represent their cause on merits.

[13]. In view of above, this revision petition is allowed, however, subject to payment of cost of Rs.10,000/- to be deposited before the Legal Services Authority, Phillaur. Consequently, impugned order dated 11.07.2014 passed by the Additional Civil Judge (Senior Division), Phillaur is set aside, The payment of cost shall be the condition precedent for

granting the aforesaid indulgence by the trial Court.

21.08.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No