

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

CR-2007-2016 (O&M)
Date of decision: 19.09.2017

MED RAM AND ORS

...Petitioners

Versus

RAHILLA

...Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Shubham Aggarwal, Advocate for the petitioners.

Mr. Sudhir Aggarwal, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 23.01.2015 passed by the Additional Civil Judge (Sr. Div.), Nuh whereby application filed by the petitioners for restoration of the suit dismissed in default on 21.07.2011 has been dismissed.

Counsel for the petitioners has submitted that the petitioners filed civil suit dated 01.09.2006 for declaration to the effect that they are owners in possession of the suit property i.e. land detailed in Sub Para A of Para No.2 of the petition on account of occupancy rights with a prayer for permanent injunction restraining the respondent/defendant from interfering in possession of the petitioners over the suit property and also from alienating the suit property. The respondent/defendant filed the written statement as well as reply to stay application. On 21.07.2011, case was fixed for evidence of the petitioners. However, the suit was dismissed for

non-prosecution as neither the petitioners nor their counsel was present before the trial Court. It is argued with vehemence that a serious prejudice is likely to be caused to the petitioners in case suit is not ordered to be restored and decided on merits particularly in the circumstances that application for restoration of the suit was filed on 29.07.2011, without wastage of time. It is prayed that suit filed by the petitioners may be restored at the board of the trial Court and the petitioners are ready to compensate the respondent/defendant for delay, if any, attributable to the petitioners though otherwise the petitioners would not be interested to delay conclusion of the trial.

Counsel for the respondent, on the contrary, has supported the impugned order with the submission that the petitioners failed to put forth any tangible explanation for failure of their counsel to appear before the trial Court on 21.07.2011. Though the application for restoration was filed on 29.07.2011 but the same remained pending for quite sometime for service of the respondent/defendant as the petitioners failed to file the process fee and the case was adjourned on a number of occasions for necessary compliance. In addition, it is argued that petition before this Court was filed in March 2016 against the order passed wayback in January, 2015, sufficient to prove that the petitioners were not diligent in pursuing their suit.

I have heard counsel for the parties, perused the paper book, particularly the order impugned and various annexures appended with the

petition.

Be that as it may, it is undisputed position of the case that the suit filed by the petitioners in the year 2006 came to be dismissed by the trial Court on account of single default of the petitioners or their counsel to appear on 21.07.2011. It is also clear that the application for restoration of the suit was filed within a period of 8 days from the date of dismissal of the suit. The very fact that the petitioners filed application for restoration of the suit without delay is sufficient to prove their bona fides that absence from the Court on 21.07.2011 was not intentional much less malafide. Under the circumstances, it would be against substantial justice in case the orders passed by the Court below dismissing the suit in default and disallowing the application for restoration are ordered to be affirmed. Indisputably, rules of procedure are handmaid to administration of justice. Every endeavour is required to be put by the Court to decide rival claims of the parties on merits after giving them sufficient and effective opportunities. In this view of the matter, reasoning adopted by the trial Court in dismissing application for restoration of the suit cannot be accepted and resultantly the impugned orders are liable to be set aside.

So far as plea of the respondent that the petitioners did not file the process fee for service in the application for restoration of the suit, it was for the Court concerned to ensure that order(s) passed by the Court is complied with. Once the Court below has not taken any serious view of failure of the petitioners to file process fee and eventually the respondent

has been served on the basis of process issued by the Court, the respondent cannot derive any advantage to her contention from the factum of failure of the petitioners to comply with order(s) of the Court below in filing the process fee.

No doubt, the present petition has been filed after about one year of dismissal of the application for restoration of the suit. However, in view of the discussion made hereinbefore, delay itself cannot form the basis to deny the relief qua restoration of the suit for adjudication of respective claims of the parties on the basis of evidence to be adduced. On the contrary, the respondent can well be compensated with costs for delay attributable to the petitioners.

For the foregoing reasons, the petition is allowed, impugned orders are set aside, application for restoration of the suit filed by the petitioners is allowed subject to payment of costs of Rs.10,000/- to the respondent. The petitioners shall prepare a demand draft of Rs.10,000/- in the name of respondent, to be handed over to the respondent or her counsel on the first date to be fixed by the trial Court. The parties through their counsel are directed to appear before the trial Court on 04.10.2017.

19.09.2017

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No

(REKHA MITTAL)
JUDGE