IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2911 of 2012
Date of Decision-17.08.2017

Gaurav Garg ... Petitioner
Versus
Pritpal Singh and others ... Respondents

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

Present: Mr. Puneet Jindal, Sr. Advocate with
Ms. Neha Anmol Mahajan, Advocate and
Mr. G.C. Dhuriwala, Advocate for the petitioner.

Mr. Rajinder Goyal, Advocate for the respondents.

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<u>RAJ MOHAN SINGH, J.</u>

[1]. Petitioner has assailed the order dated 27.02.2012 passed by Civil Judge (Junior Division), Chandigarh in Civil Suit No.91 of 1999 to the extent of dismissing the application for recalling the order of restoration dated 18.10.2010.

[2]. Learned Senior Counsel for the petitioner submitted that the aforesaid suit was filed by plaintiff-Pritpal Singh in which Will executed by Gurdial Kaur on 20.02.1996 in favour of Atamjit Singh was challenged. Atamjit Singh had executed a registered Will in favour of the petitioner in respect of the same house property on 06.08.1999. Atamjit Singh had already executed an agreement to sell on 01.04.1999 with G.C. Garg and Santosh Garg after taking consideration. Atamjit Singh died on 27.08.1999. The aforesaid civil suit filed by the plaintiff/Pritpal Singh was dismissed in default on 26.11.2001. No application for restoration of the suit was filed within

the prescribed period. The application for restoration of the suit came to be filed only on 13.02.2004 i.e. more than three years after the dismissal of the suit in default. This application was not accompanied by any application for condonation of delay. In the application for restoration, the plaintiff stated the following i.e.

(a) Firstly that the counsel for the plaintiff lastly attended the Court on 23.09.2000, in which fresh summons were issued to respondent No.1 and the case was adjourned to 15.03.2001.

(b) Secondly, when on 15.03.2001, the counsel for the plaintiff went to the Court, the case was not listed in the daily cause list. The counsel enquired from Ahlmad/Reader of the Court, but they did not give any satisfactory answer and the counsel made an application for tracing out the case.

(c) Thirdly, after filing the application for tracing out the case, the counsel for the plaintiff visited Ahlmad/Reader of the Court many times for enquiry, but Ahlmad/Reader of the Court replied that the case file has not been traced out.

(d) Fourthly, after the lapse of two years, when the case file was not traced, the plaintiff moved an application before the Court for tracing out the case and on 30.01.2004, he came to know that the case has already been transferred to the Court of Ms. Ritu Bahl, Civil Judge (Junior Division), Chandigrah. Thereafter, counsel for the plaintiff inspected the record and came to know that the case was dismissed in default on 26.11.2001. Plaintiff further pleaded that he came to know only on 05.02.2004 about the dismissal of the case in default.

On the aforesaid pleas, the plaintiff filed the application for restoration by claiming that the application was within limitation from the date of knowledge. The said application was allowed on 18.10.2010.

[3]. The petitioner filed an application under Order 1 Rule 10 CPC for bringing himself on record as legal representative of Atamjit Singh. The said application was allowed on 10.05.2011. Thereafter, he moved an application for recalling the order dated 18.10.2010, vide which restoration of the suit was allowed.

[4]. Petitioner claimed that restoration could not have been ordered as issues of limitation, fraud and conduct of the plaintiff were involved. Petitioner asserted that the order dated 18.10.2010 was illegal as the plaintiff made misleading statement and committed fraud with the Court.

[5]. Learned Senior Counsel referred to para Nos.2, 3, 4 of the application for restoration of the above said suit filed by the plaintiff and challenged the aforesaid contention of the plaintiff with reference to interlocutory orders dated 15.03.2001, 15.05.2001 and 27.08.2001 passed by the Civil Judge (Junior Division), Chandigarh. Pleadings of para Nos.2, 3, and 4 of the application for restoration of suit and interlocutory orders corresponding to the assertions in the application are tabulated as under:-

2. That the counsel for the plaintiff has last attended the Court of Mrs. Jatinder Walia, Civil Judge (Jr. Divn.), Chandigarh on 23.09.2000 and in which fresh summons were issued to the respondent No.1 and the case was adjourned to 15.03.2001 by the same Court.	*"Present: Sh. T.P.S. Tung, Cl. for plaintiff.* *GP for def. No.2.* *Suit received by transfer. It be checked and registered. Let, notice to the defendant No.1 be issued for 15.05.2001 on filing of PF etc.* *Sd/- Ritu Bahl* *CJ(JD)/15.03.2001"*
3. That when on 15.03.2001 the counsel along with the applicant went to the Hon'ble Court it was not listed in the daily cause list and when the counsel enquired about, the same the ahlmad/reader of the Hon'ble Court have not given the satisfactory answer and on the same day the counsel for the applicant/plaintiff moved the application for tracing out the case file.	*"Present: Sh. T.P.S. Tung, Cl. for plaintiff.* *GP for def. No.2.* *Copy of petition not filed. Same be filed within 7 days then issue the notice to defendant for 27.08.2001 on filing of PF etc.* *Sd/- Ritu Bahl* *CJ(JD)/15.05.2001"*
4. That after the filing of the above said application for tracing out the case file the applicant/plaintiff came so many times before the ahlmad/clerk of the Court of the inquiry about the above said case file but all the time he was told by the clerk/reader of the Court that the above said case file have not been traced out yet.	*"Present:Sh. T.P.S.Tung, Counsel for plaintiff.* *Ms. S. Rana, Cl. for defendant No.(2).* *Notice to def. No.(1) not issued for want of copy etc. Now fresh notice to def. No.1 issued for 26.11.2001 through registered copy only on furnishing of requisite charges. Last opportunity is granted.* *Sd/- Ritu Bahl* *CJ(JD)/27.08.2001"*

[6]. The grounds on which restoration was sought were primarily revolving around the statement of alleged fact pleaded by the plaintiff that his counsel last attended the Court on 23.09.2000

and the case was adjourned to 15.03.2001. On 15.03.2001, the case was not listed and thereafter, the story as formulated by the plaintiff in the application started. The perusal of the interlocutory order dated 15.03.2001 shows that Sh. T.P.S Tung, Advocate appeared on behalf of the plaintiff. The same counsel even appeared on 15.05.2001 and 27.08.2001. In view of above, the grounds taken by the applicant in the application for restoration were factually wrong, rather the same were misleading in nature and against the orders on record.

[7]. Learned Senior Counsel further contended that the plaintiff was impleaded as defendant No.5 in Civil Suit No.2 dated 11.02.2002 filed by Smt. Surinder Kaur widow of Atamjit Singh. The said suit was decided by the trial Court on 11.06.2009. The stand taken by the plaintiff in the aforesaid suit was to the effect that he had performed last rites of Atamjit Singh, therefore, the factum of death of Atamjit Singh was in his knowledge, but still he did not disclose the aforesaid fact to the Court on 17.09.1999, 20.01.2000, 18.05.2000, 23.09.2000, 15.03.2001, 15.05.2001 and 27.08.2001. The suit was ultimately dismissed in default on 26.11.2001. Learned Senior Counsel by highlighting the aforesaid facts, contended that a calculated fraud was committed upon the Court and in this way, the fraud has vitiated all solemn acts. The aforesaid facts were specifically pleaded in the application dated 18.11.2011, but the same were not denied by the plaintiff in any manner.

[8]. Learned Senior Counsel further contended that even after filing of the application for restoration of the suit on 12.03.2004, the plaintiff still continued to mislead the Court on 07.04.2004 and requested for the service of Atamjit Singh on 07.02.2005, 04.05.2005, 16.09.2005, 24.01.2006, 09.05.2006, 11.10.2006, 12.12.2006, 16.04.2007, 04.08.2007 and 08.11.2007. On 18.03.2008, when he was caught for wrong service of defendant No.1 by the Court, then he disclosed the factum of death of defendant No.1. In fact, service was effected on Surinder Singh alleging him to be nephew of deceased Atamjit Singh, which was factually wrong as Surinder Singh is son of plaintiff-Pritpal Singh. The signatures of Surinder Singh on the first page and on the backside of summons were on questionable note. In fact, it was done by the plaintiff just to save himself from the displeasure of the Court.

[9]. Learned Senior Counsel also submitted that it was a case of rank forgery committed by the plaintiff. In view of ratio laid down in **S.P. Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853, Hamza Haji vs. State of Kerala and another, 2006(7) SCC 416, A.V. Papayya Sastry and ors. vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431** *and* **Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar through Shri Raghunath Sahi, 2003(2) RCR (Rent) 148,** the fraud has vitiated every solemn act of the plaintiff and he was not entitled

to any equitable/discretionary relief from the Court. It is a settled principle of law that a person who has committed fraud with the Court can be thrown out at any stage of litigation.

[10]. Learned Senior Counsel further submitted that in addition to the aforesaid fraud, the application filed by the plaintiff for restoration of the suit was not accompanied by any application for condonation of delay, which was more than three years and that too on fraudulent ground as submitted above. Learned Senior Counsel placed reliance upon ***Damodaran Pillai and others Vs. South Indian Bank Ltd., 2005(4) RCR (Civil) 132, Noharlal Verma Vs. District Co-operative Central Bank Limited, Jagdalpur, 2009 AIR (SC) 664, Ragho Singh Vs. Mohan Singh and others, (2001) 9 Supreme Court cases 717, K.D. Sharma Vs. H.P. State Co-operative Bank Ltd., 2011(6) RCR (Civil) 209, Smt. Dev Bala Sehgal Vs. Devinder Pal Sehgal, 2002(1) Civil Court Cases 32 (P&H) and Sneh Gupta Vs. Devi Sarup and others, 2009(2) RCR (Civil) 129*** and contended that limitation is a statute of repose. The limitation starts to run from the date of dismissal of the suit and not from the date of knowledge. Article 122 of the Limitation Act, 1963 governs the limitation for restoration of suit or appeal or application and the limitation provided under the aforesaid article is 30 days from the date of dismissal. The limitation starts to run from the date of dismissal of the suit and not from the knowledge in any eventuality. Any application beyond the period of 30 days has to be

accompanied by an application for condonation of delay, if it is not the case of original jurisdiction.

[11]. Learned Senior Counsel contended that in view of ratio laid down in ***Ragho Singh's case (supra),*** in the absence of any application for condonation of delay, restoration could not have been ordered by the trial Court. By referring to the ratio laid down by the Hon'ble Apex Court in ***Noharlal Verma's case (supra)***, learned Senior Counsel contended that the limitation goes to the root of the matter. Under Section 3 of the Limitation Act, an onerous duty is cast upon the Court to see whether the cause of action is within limitation, even if, the limitation is not set up as a defence by the defendant. In view of above, learned Senior Counsel contended that in the absence of any such application for condonation of delay, trial Court was not justified in condoning the delay of more than three years in filing the application for restoration of the suit. Learned Senior Counsel by referring to ***State of Rajashtan Vs. Shankar Lal, 2010(3) SLR 703*** contended that in the absence of any sufficiency of cause, no restoration of the suit was possible.

[12]. On the other hand, learned counsel for the respondents submitted that filing of application under Section 5 of the Limitation Act is not necessary and the delay can be condoned even on oral prayer of the plaintiff if sufficient reason for causing delay in filing the application is shown.

[13]. I have considered the submissions made by learned counsel for the parties.

[14]. It is true that merit of the case cannot be pitted against the threshold of technicalities. Restoration can be ordered on showing sufficient cause for non-appearance. In an appropriate case, even in the absence of an application for condonation of small delay, the Court is not precluded from considering the cause of restoration of the case, provided the applicant has come to the Court with clean hands. If the conduct of the applicant is proved to be not *bona fide*, rather fraudulent, then no indulgence can be granted in favour of a person who has not come to the Court with clean hands, rather has played fraud with the Court. The conduct of the plaintiff has been highlighted in the preceding paras, wherein restoration of the suit was sought on fraudulent premise by making averments in the application which were contrary to the record i.e. interlocutory orders passed by the trial Court from time to time. The plaintiff represented the case even after the death of his brother Atamjit Singh in a fraudulent manner. His conduct can be appreciated from the stand taken by him in Civil Suit No.2 dated 11.02.2002 filed by Smt. Surinder Kaur widow of Atamjit Singh.

[15]. It is also a settled principle of law that limitation starts from the date on which the order is passed and not from the date of knowledge as has been held in ***K.D. Sharma's case (supra)*** and ***Smt. Dev Bala Sehgal's case (supra)***, wherein Article 122 of the

Limitation Act was relied. Limitation is a statute of repose and an onerous duty is cast upon the Court itself under Section 3 of the Limitation Act and bar of limitation applies to the case, even if, limitation is not set up as a defence. The Court is obligated to see that cause is within limitation.

[16]. In the instant case, even delay of more than three years in filing the application for restoration of the case was not followed by an application under Section 5 of the limitation Act. The Court can ignore such application in case of small delay only provided the cause is based on sufficient reasons and is not fraudulent in nature. In the instant case, the plaintiff himself pleaded certain wrong facts in the application itself, which were contrary to the interlocutory orders on record. The conduct of the plaintiff cannot be termed as *bona fide*. It is also a settled principle of law that a person who has not come to the Court with clean hands, does not deserve any equitable/discretionary relief from the Court. A person who has played fraud with the Court can be thrown out at any stage of litigation. The application filed by the petitioner on 18.11.2011 after becoming the party to the *lis* on 10.05.2011 was a *bona fide* act as on coming to know the fraud, he ventured to highlight the same. There cannot be any limitation for exposing the fraud. The limitation starts from the stage on which the fraud is detected.

[17]. Taking into consideration the totality of facts and circumstances of the case, I find that the conduct of the plaintiff on

record is not found to be *bona fide* and satisfactory so as to grant any indulgence in his favour. Consequently, this revision petition is accepted. Resultantly, the order dated 18.10.2010 passed by the trial Court for restoration of the suit is set aside. The suit is ordered to be dismissed.

(RAJ MOHAN SINGH)
JUDGE

17.08.2017
Prince

Whether reasoned/speaking **Yes/No**

Whether Reportable **Yes/No**