

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.316 of 2015

Date of decision:31.5.2017

Krishan

...Petitioner

Versus

Chattar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms.Amandeep Kaur, Advocate for
Mr.Ramesh Sharma, Advocaes for the petitioner.
None for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision, by one of the legal representatives of plaintiff, filed under Article 227 of Constitution of India, is directed against the order dated 24.12.2011 (Annexure P-1), whereby suit of the plaintiff was dismissed as withdrawn on the statement suffered by the counsel, without there being any permission or instructions of the plaintiff and also against the order dated 29.10.2014 (Annexure P-4), whereby his application for restoration of suit was also dismissed.

Notice of motion was issued.

As per order dated 7.1.2016, service was complete. Learned counsel put appearance on behalf of respondent No.1. Thereafter, none appeared on behalf of respondents on 27.5.2016 and 26.8.2016. However, on 7.2.2017, learned counsel for the respondents appeared and the case was adjourned for today, as learned counsel for the petitioner did not appear on

that day. Today, neither anybody has come present to oppose this revision petition nor any request for pass over has been made on behalf of the respondents.

Heard learned counsel for the petitioner.

A combined reading of both the impugned orders Annexures P-1 and P-4 would show that the learned trial court misdirected itself, while passing the impugned orders and particularly an order dated 29.10.2014 (Annexure P-4), dismissing the application for restoration moved on behalf of the plaintiff. It is so said because had the plaintiff passed on appropriate instructions to his counsel before the learned trial court for making a statement, seeking permission of the court to withdraw the suit, there would have been no occasion for the plaintiff to move the application for restoration. However, it was specifically pleaded case of the plaintiff in his application for restoration that he never passed on any such instructions to his counsel to withdraw his suit.

It is also a matter of record that both the parties have already led their evidence and the suit was at the final stage as it was listed for arguments. In such a situation, it does not appeal to reason as to why learned counsel for the plaintiff should have suffered a statement before the learned trial court, withdrawing the suit on 24.12.2011 when the impugned order (Annexure P-1) was passed.

Perusal of the impugned order dated 29.10.2014 (Annexure P-4) would further show that learned trial court proceeded on technicalities instead of appreciating the substantial aspect of the matter, while dismissing the application for restoration moved by the petitioner. It is the settled principle of law that rules of procedure are meant for advancing the cause of

justice. Every court of law must make an endeavour to grant reasonable opportunities to both the parties to put up their best case before the court. Nobody should be forced to go home with the grievance that sufficient opportunity was not granted by the court. By following this principle of law, learned court would achieve twin objects i.e. (i) it would avoid multiplicity of litigation between the parties and (ii) the court would be in a better position to do complete and substantial justice between the parties.

Since the learned trial court has failed to appreciate and follow the above-said principles of law, while passing the impugned orders, these cannot be sustained. In fact, the impugned orders (Annexures P-1 and P-4) have caused a manifest injustice to the plaintiff, without there being any fault of his part. The moment plaintiff came to know about the withdrawal of his suit without his consent vide order dated 24.12.2011 (Annexure P-1), he immediately approached the learned trial court by moving an appropriate application for restoration of the suit. However, the learned trial court proceeded on a hyper technical approach instead of appreciating the true factual as well as legal aspects of the matter because of which the impugned orders have resulted in miscarriage of justice and the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders have been found suffering from patent illegality and perversity, these cannot be sustained.

Accordingly, the impugned order dated 24.12.2011 (Annexure P-1) as well as the impugned order dated 29.10.2014 (Annexure P-4) passed

by the learned trial Court are hereby set aside. Application of the plaintiff for restoration of his suit would stand allowed. Since the suit remained pending for quite some long time, the learned trial court is directed to proceed further from that very stage at which the case was listed when it was dismissed as withdrawn, vide impugned order dated 24.12.2011 (Annexure P-1). The learned trial Court shall also make an endeavour to decide the suit at an early date, however, in accordance with law.

Resultantly, with the above-said observations made and directions issued, the present civil revision petition stands allowed, however, with no order as to costs.

31.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No