

In the High Court of Punjab and Haryana at Chandigarh

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CR No.3838 of 2016

Date of decision: 23.8.2017

**KAUSHALYA INFRASTRUCTURE
DEVELOPMENT CORP LTD.**

.....petitioner

Versus

NARENDER SOROUT

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Nitin Jain, Advocate,
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J.(oral)

As per office report, service is complete. None has appeared on behalf of the respondent.

In view of above, this Court proceeded to decide the case on merits.

Petitioner has assailed the orders dated 8.12.2015, dismissing the appeal for non-prosecution, and 10.3.2016, dismissing the application for restoration of the appeal, passed by the Additional District Judge, Palwal.

The suit for declaration and permanent injunction filed

by the plaintiff was dismissed by the Additional Civil Judge (Sr.Divn.) Hodal against which an appeal was preferred before the lower Appellate Court. On 8.12.2015, the appeal was dismissed for non prosecution on account of non appearance by learned counsel for the appellant. On 7.1.2016, an application was filed for restoration of the appeal on the ground that on 8.12.2015, senior counsel Sh.P.P.Chhabra had not turned up from Faridabad to attend the Court at Palwal. Since the case was only for formal purpose and no material proceedings were to be conducted, senior counsel instructed Sh.B.D.Gautam, Advocate to attend the Court at Palwal. Unfortunately, Sh.B.D.Gautam, Advocate could not attend the Court at the relevant time as he was slightly late and by that time the case had already been dismissed in default.

The lower Appellate Court took notice of the fact that the affidavit filed by Sh.B.D.Gautam, Advocate was not carrying the signature of the deponent though the same was attested. The recital of the affidavit was to the effect that on 8.12.2015, counsel was slightly late and the case was dismissed for non prosecution. The Court also took notice of the fact that Sh.B.D.Sharma, Advocate was not the counsel for the appellant. The controversy with regard to the real counsel engaged by the appellant now appears to be highlighted by Sh.P.P.Chhabra, Advocate, who has deposed in terms of para No.3 of the

affidavit that due to inadvertent mistake on his part the fault on the part of deponent occurred. He has also mentioned the reasons for not appearing in the Court at Palwal on 8.12.2015.

At this stage, without going into further controversy, it would be just and expedient to restore the cause of justice. The impugned orders dated 8.12.2015 and 10.3.2016 passed by the lower Appellate Court are hereby set aside. Appeal is restored to its original number subject to payment of costs of ₹ 20,000/- to be deposited in the Legal Service Authority at Palwal. Payment of costs shall be the condition precedent for granting indulgence by the lower Appellate Court in the aforesaid context.

Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

August 23, 2017

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Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No