

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

C.R. No. 378 of 2017 (O&M)

Date of Decision:- 10.05.2017

Zile Singh

....Petitioner

vs.

Aditya Fuels Limited and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Rao Ajender Singh, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

C.M.No. 2431-C of 2017

This application is for placing on record application dated
9.1.2017 (Annexure P-2).

Application is allowed. Application dated 9.1.2017 (Annexure
P-2) is taken on record.

C.M. No.10492-CII of 2017

This application is for placing on record affidavit dated
3.3.2017 as Annexure P-3.

Application is allowed. Affidavit Annexure P-3 attached with
the application is taken on record.

C.R. No. 378 of 2017

Petitioner-Zile Singh has approached this Court by way of

filing this revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 9.1.2017 passed by the Civil Judge (Junior Division), Rewari, whereby the application filed by him for seeking permission to deposit the Court fee was dismissed.

Briefly, the facts of the case, as mentioned in the revision petition, are that petitioner filed a suit for declaration with consequential relief against the respondents to the effect that he is entitled to recover the salary of five months along with incentives and interest. Petitioner was appointed to the post of Assistant Manager by the respondents vide appointment letter dated 1.1.2013. His salary was fixed @ ₹ 20,000/- per month along with incentives and Provident Fund. However, the respondents started harassing the petitioner and thereafter, he was thrown out of the job. The petitioner sent a legal notice to respondents but they did not respond to it. Thereafter, a suit was filed by the petitioner but the respondents did not file any reply thereto and their defence was struck off vide order dated 3.12.2014 and, they were proceeded against ex parte vide order dated 30.9.2015. Ultimately, the suit filed by the petitioner was decreed in his favour vide judgment and decree dated 9.9.2016. However, petitioner was directed to deposit the Court fee within a period of two months, failing which, his suit would be deemed to have been dismissed.

As per case of the petitioner, the amount towards court fee was paid to counsel but he did not deposit the same within the stipulated period. In spite of asking time and again, neither the Court fee was deposited nor any application for extension of time to deposit the Court fee was moved.

Thereafter, an application was moved on 9.1.2017 which was dismissed on

the same day on the ground that two months' period was granted to deposit the Court fee which has already expired. The aforesaid order of dismissal of application dated 9.1.2017 has been challenged by way of filing the present revision petition.

Learned counsel for the petitioner submits that there was no intention of the petitioner not to deposit the Court fee and the delay had occurred because of the fault on the part of his counsel and also due to the communication gap between the petitioner and his counsel. In this regard, petitioner has also placed on record an affidavit of his counsel by moving separate application which is annexed as Annexure P-3 with the petition. Counsel further submits that the petitioner is ready to deposit the Court fee and also undertake to abide by all the conditions that may be imposed by this Court or by the trial Court. Learned counsel also submits that the petitioner would suffer a great prejudice which cannot be compensated in any manner. He also submits that the petitioner is ready to compensate the party opposite.

Without issuing notice to the other side as it will cause unnecessary delay and expenses will be incurred by the other party in engaging a lawyer, this revision petition is being decided.

Admittedly, the suit filed by the petitioner was decreed ex-parte with costs. Defendants were directed to pay salary amounting to ₹ 1,50,000/- along with interest @ 12% per annum to the petitioner-plaintiff from the date of filing of suit till its realization. Defendants were also restrained from removing the petitioner-plaintiff from service except in due course of law. It was also mentioned in the order that in case the petitioner-

plaintiff failed to deposit the requisite court fee on the amount of ₹ 1,50,000/- claimed in the suit within a period of two months, suit of the plaintiff-petitioner would be deemed to have been dismissed.

The stand of the petitioner is that amount of Court fee was paid to his counsel but same could not be deposited within the stipulated period and, thus, delay has occurred. As per condition imposed vide judgment of the trial Court, the suit was dismissed due to non-deposit of the Court fee. An affidavit has also been placed on record by Mr. Suresh Rambas, Advocate, representing the petitioner-plaintiff before the District Courts, Rewari, stating that the petitioner had handed over the Court fee to him but the same could not be deposited in time due to some problem in his family. It is also mentioned in the application that he tried to deposit the same thereafter but due to demonetization policy, the amount could not be deposited. Subsequently, an application was also moved by the counsel for deposit of Court fee on 9.1.2017 which was dismissed by the trial Court.

It is a settled proposition of law that the interest of party should not suffer on account of inaction or fault on the part of the lawyer. This view was taken by Hon'ble the Apex Court in case of **Rafiz and another vs. Munshilal and another**, 1981 AIR SC 1400 by holding that the interest of the party should not suffer due to inaction on the part of his counsel. In the said judgment, the case was dismissed for non-prosecution.

By considering that fault of the counsel was there and his client should not suffer, a similar view was taken by this Court in judgment passed in **Krishan Kumar vs. Kavita** 2014(9) RCR (Civil) 2964. In this case, counsel for the respondent fell ill and he could not appear. Ultimately, an

application under Order 9 Rule 9 CPC was moved by the respondent for restoration of application under Section 25(ii) of the Hindu Marriage Act which was dismissed in default. The order of dismissal of the application in default was set aside and the application was allowed. It was held in that case that in view of the fact that application was supported by an affidavit of the counsel showing sufficient cause and reason for non-appearance, the petitioner cannot be allowed to suffer for laches or lapses on the part of the lawyer.

A similar view was taken in another judgment of the Rajasthan High Court in the case of **M/s Aravali Stone Company vs. Urban Improvement Trust**, 2003(3) CivCC 342.

In view of facts and law position as discussed above, the present revision petition deserves to be allowed as it was a case of fault on the part of the lawyer as money was paid by the petitioner to his counsel but the counsel could not deposit the same in time.

Accordingly, the present revision petition is allowed. Impugned order dated 9.1.2017 is set aside and the trial Court is directed to permit the petitioner to deposit the Court fee within a period of one month from the date of receipt of certified copy of this order. However, this shall be subject to payment of costs amounting to ₹ 5000/- to be paid by the petitioner before the trial Court.

May 10, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes