

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3875 of 2017 (O&M)

Date of Decision: 27.09.2017

Kamaldeep Kaur @ Kamaldish Kaur and another

... Petitioners

Vs.

Amarjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.K. Arya, Advocate
for the petitioners.

Mr. B.S. Bhinder, Advocate
for the respondent.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the order dated 28.03.2016 (Annexure P-1), whereby first appeal of the petitioners was dismissed and also the order dated 28.03.2017 (Annexure P-2), whereby their application for restoration of the appeal was also dismissed, they have approached this Court by way of present civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned orders.

Notice of motion was issued.

Heard learned counsel for the parties.

Learned counsel for the petitioners submits that although the petitioners should have been more careful and vigilant to pursue their appeal diligently, yet in the interest of justice and also to avoid miscarriage of justice,

application for restoration of first appeal of the petitioners deserves to be allowed, so that the appeal is heard and decided on merits, subject to payment of reasonable amount of costs by the petitioners to the respondent.

Learned counsel for the respondent vehemently opposed the abovesaid contention raised by learned counsel for the petitioners, contending that the petitioners have been misusing the process of law and the present revision petition is liable to be dismissed.

Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that to avoid serious miscarriage of justice, abovesaid impugned orders contained in Annexures P-1 and P-2 are liable to be set aside and the application for restoration of first appeal of the petitioners deserves to be allowed, so as to enable the first appellate Court to consider and decide their appeal on merits.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Every Court of law must grant reasonable opportunity to both the parties to put up their best case. Nobody should be forced to go home with the grievance that reasonable opportunity was not granted by the learned Court. Further, it should also be an endeavour of the Court to decide the lis on merits, instead of technicalities, so as to avoid miscarriage of justice and also to do substantial justice between the parties. Since the learned first appellate Court could not appreciate abovesaid factual as well as legal aspect of the matter, while passing the impugned orders, the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case, 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, the same cannot be sustained. Accordingly, impugned order dated 28.03.2016 (Annexure P-1) and order dated 28.03.2017 (Annexure P-2) passed by the learned first appellate Court are hereby set aside.

Application of the petitioners for restoration of their first appeal would stand allowed, however, subject to payment of Rs.15,000/- as costs to be paid by the petitioners to the respondent before the learned Court below on or before the next date of hearing. First appeal filed by the petitioners would stand restored to its original number. The learned first appellate Court shall hear the appeal on merits and decide the same in accordance with law.

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

[RAMESHWAR SINGH MALIK]
JUDGE

27.09.2017
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No