

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

CR No.473 of 2016

Date of Decision: 31.07.2017

VIJAY KUMAR

-PETITIONER

VS

NIRMAL SHARMA

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vineet Chaudhary, Advocate,
for the petitioner.

Mr. Vivek Suri, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has filed this revision petition against the order dated 14.12.2012 passed by Civil Judge (Senior Division), Ambala vide which prayer for setting aside the order dated 07.07.2015 passed by Civil Judge (Junior Division), Ambala was dismissed in the context of restoration of the main suit.

[2]. Plaintiff/petitioner filed a suit for specific performance against the defendant/respondent. On 14.12.2012, none appeared on behalf of the plaintiff despite several calls and the suit was ultimately dismissed in default by the trial Court.

[3]. An application was filed for restoration of the same on 05.01.2013, but the suit was not restored on the ground that the plea taken was not believable as the diary of the Advocate was not made available on record.

[4]. Perusal of the record reveals that the issues were framed on 04.06.2011. The plaintiff evidence started w.e.f 28.07.2011, but the same was not led and on 18.10.2012, the case was adjourned to 14.12.2012 with a cost of Rs.200/-. Last opportunity was also granted to the plaintiff to lead evidence. On 14.12.2012, i.e. the adjourned date, none appeared and the suit was dismissed in default.

[5]. In the application for restoration, the plea taken by the plaintiff/petitioner was that due to wrong recording of date as 04.01.2013 in place of 14.12.2012, learned counsel for the plaintiff could not appear.

[6]. Having heard the submissions made at the bar, I think that the cause of justice can be met by restoring the suit, subject to payment of cost of Rs.20,000/- to be paid to the defendant/respondent. Accordingly, the impugned orders are set aside. Revision petition is allowed. Payment of cost shall be the condition precedent for showing indulgence by the trial Court in the aforesaid context. Both the parties are directed to appear before the trial Court on 16.08.2017. Necessary consequences to follow thereafter in accordance with law.

[7]. Disposed of.

31.07.2017

Prince

**Whether Reasoned/Speaking
Whether Reportable**

(RAJ MOHAN SINGH)

JUDGE

Yes/No

Yes/No