

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4742-2017

Date of Decision:- 10.10.2017

Jai Kumar and others

.....Petitioner

Versus

Sukhbir and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rahul Sharma, Advocate
for the petitioner.

RITU BAHRI, J. (Oral)

Present petition has been filed under Article 227 of the Constitution for setting aside the impugned order dated 20.05.2017 (Annexure P-6), passed by learned Additional District Judge, Karnal, whereby the appeal filed against the order dated 04.07.2014, passed by the learned Civil Judge (Jr. Divn.), Karnal, vide which the application for restoration of the suit, which was dismissed in default vide order dated 14.08.2010, has been dismissed.

Perusal of the impugned order shows that the costs of ₹200/- was imposed upon the plaintiff on 17.07.2010 to file reply and thereafter on 14.08.2010, cost was not deposited and the suit was dismissed in default for non-filing of costs. The plea taken by the plaintiff was that

since his counsel had noted down the date as 16.08.2010 inadvertently and on this account he could not appear before the Court on 17.07.2010 and 14.08.2010.

Heard.

In the present case, learned counsel for the petitioner is not disputing this fact that filing of an affidavit was necessary along with the application for restoration of the suit, which was dismissed on 14.08.2010, however, the suit should have been restored by giving an opportunity to the petitioner to file an appropriate affidavit. Even though under Section 35(b) CPC the costs had been imposed but on account of the fact that the plaintiff had noted down a wrong date, non-deposit of the costs could not be made a ground to dismiss the suit and not restoring the same thereafter once.

Taking into consideration the above-said facts of the present case, impugned order dated 20.05.2017 (Annexure P-6), passed by learned Additional District Judge, Karnal is hereby set aside and the trial Court is directed to accept affidavit of the plaintiff, then pass an appropriate orders, subject to deposit of ₹5,000/- as costs, to be deposited with the State Legal Service Authority, Karnal.

October 10, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No