

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No. 5181 of 2016 (O&M)

Date of decision: 01.08.2017

Chand Singh

... Petitioner

versus

Ram Singh and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK.**

Present: Mr. H.P.S. Ishar, Advocate  
for the petitioner.

Mr. R.K. Shukla, Advocate  
for respondent No.1.

**RAMESHWAR SINGH MALIK, J. (ORAL)**

The present revision petition, at the hands of the plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 21.01.2016 (Annexure P-6) passed by the trial Court, whereby an application dated 13.07.2015 moved by the plaintiff/petitioner under Order 9 Rule 9 CPC, for restoration of the suit dismissed in default on 10.07.2015, was dismissed by the learned trial Court.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that there was no delay at the hands of the plaintiff-petitioner in moving an application for restoration. Suit was dismissed for non-prosecution on 10.07.2015 whereas the

application for restoration was filed by the plaintiff on 13.07.2015. The ground taken in the application for restoration of the suit was that the learned counsel for the plaintiff noted down the date wrongly as 13.07.2015 due to which he could not appear before the trial Court on 10.07.2015. The application was supported by an affidavit. In such a situation, learned trial Court ought to have allowed the application for restoration. However, since the learned trial Court misdirected itself, while passing the impugned order, a serious prejudice has been caused to the plaintiff-petitioner. Having said that, this Court feels no hesitation to conclude that since the impugned order is wholly misconceived, the same cannot be sustained.

Learned counsel for the respondents could not raise any meaningful argument in support of the impugned order and rightly so as no such argument is available to him. Rules of procedure are meant for advancing the cause of justice. It is the settled proposition of law that both the parties must be granted due opportunity to put up their best case before the court. Nobody should be forced to go home with the grievance that reasonable opportunity was not granted by the Court. However, in the present case learned trial Court failed to consider the above said principle of law, while passing the impugned order and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this court is of the considered view that since the impugned order dated 21.01.2016 has been found suffering from patent illegality, the same cannot be sustained. Accordingly, the impugned order dated 21.01.2016 is hereby set aside. Consequently, the application for restoration moved by the petitioner/plaintiff would stand allowed.

Learned trial court is directed to proceed with the suit and to decide the same in accordance with law at an early date.

No order as to costs.

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

**August 1, 2017**

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Whether speaking/non-speaking: Yes/No

Whether reportable : Yes/No