

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5528 of 2014(O&M)

Date of Decision:1.11.2017

Passiana Trading Company

---Petitioner

vs.

Manga Ram

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Mohit Jaggi, Advocate
for the petitioner

Mr. S.S.Rangi, Advocate
for the respondent

Rekha Mittal, J.

CM No. 23164-CII of 2017

Heard.

Allowed as prayed for. Annexure P-5 is taken on record.

C.R.No. 5528 of 2014

The present petition directs challenge against order dated 23.9.2013 (Annexure P-2) passed by the Civil Judge (Junior Division), Patiala whereby application filed by the petitioner for restoration of application under Order 33 Rule 1 of the Code of Civil Procedure (in short “the Code”) dismissed in default on 15.10.2008, has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed

a suit for recovery of Rs. 23,50,000/- (Rs. 14,50,000/- as principle amount and Rs. 9,00,000/- qua interest) with future interest. Alongwith the suit, an application under Order 33 Rule 1 of the Code seeking permission to sue as forma pauperis was filed and the same was dismissed by the trial court vide order dated 15.10.2008. Later, the petitioner filed an application for restoration of the application but the same came to be dismissed vide order dated 23.9.2013 (Annexure P-2). The petitioner preferred an appeal against order dated 23.9.2013 but the same was dismissed by the Additional District Judge, Patiala.

Counsel for the petitioner has submitted that as the petitioner had filed an application to sue as an indigent person and till that application was decided, there was no suit pending before the court. It is further argued that even if the trial court has dismissed the application under Order 33 Rule 1 of the Code, the Court was required to provide an opportunity to the petitioner to pay requisite court fee. It is argued with vehemence that dismissal of application for permission to sue as forma pauperis either in default or on merits would have the same consequence of the applicant/petitioner being liable to pay court fee in case he wanted to prosecute his remedy. It is further submitted that as the petitioner is ready to pay the requisite court fee, he may be allowed to proceed with the suit after payment of requisite court fee.

Counsel representing the respondent, on the other hand, would urge that the petitioner is not entitled to indulgence of this court in view of his mala fide conduct coupled with that application for restoration was clearly barred by limitation as the same was filed in February 2010 despite

the petitioner having come to know about order of dismissal four months after the order dated 15.10.2008 was passed by the Court.

I have heard counsel for the parties, perused the paper book particularly the order dated 15.10.2008 and the order impugned.

Perusal of order dated 15.10.2008 (Annexure P-5) would make it evident that in the head note, it is referred to “In the matter of suit. Application under Order 33 Rule 1 CPC for grant of permission to sue the defendant as indigent person”. A relevant extract therefrom reads as follows:-

“Present: None for the applicant

Counsel for the respondents

Case called several times during the day but neither applicant nor any counsel has appeared on his behalf. It is 4.15 PM As such the present case is dismissed in default. File be consigned to the Record Room.”

Counsel for the respondent has not disputed that on 15.10.2008, application under Order 33 Rule 1 of the Code was pending consideration before the trial court. The court while recording absence of the petitioner or his counsel in the head note as well as main part of the order has referred to applicant and not plaintiff. In the face of order dated 15.10.2008 coupled with that there is no dispute between the parties that on that day, only application under Order 33 Rule 1 of the Code was fixed before the trial court, I find merit in contention of the petitioner that even if the trial court has dismissed the application for grant of permission to sue as forma

pauperis, the Court should have fixed a date calling upon the petitioner to pay the requisite Court fee. As the Court has not afforded an opportunity to the petitioner to pay the requisite court fee while dismissing his application under Order 33 Rule 1 of the Code and the petitioner is ready to pay the requisite court fee, the order impugned cannot be allowed to stand in his way to proceed with the suit after payment of court fee.

In view of the above, without advertting to merits of the application seeking restoration of the application under Order 33 Rule 1 of the Code and the order impugned, the petition stands disposed of with a direction that the petitioner is allowed 30 days' time to pay requisite court fee with the trial court. In case the petitioner pays the court fee within the stipulated period, the trial court would register the suit as per rules and thereafter proceed with the matter, in accordance with law.

Petition stands disposed of accordingly.

(Rekha Mittal)
Judge

1.11.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No