

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

**CR No. 640 of 2017
DECIDED ON: FEBRUARY 01, 2017**

PUNJAB SMALL INDUSTRIES & EXPORT CORPORATION & ANR

....PETITIONERS

VERSUS

JOGINDER SINGH

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Munisha Gandhi, Sr. Advocate with
 Ms. Salina Chalana, Advocate
 for the petitioners.

JASPAL SINGH, J

Challenge in this revision petition is to the order dated October 25, 2016 (Annexure P-1) passed by learned Additional District Judge, Jalandhar whereby, an application for restoration filed by the respondent has been allowed.

The brief facts of the case are that respondent/plaintiff filed a suit for the relief of mandatory injunction and permanent injunction. During the pendency of the said suit, the parties arrived at a compromise and preferred an application under Order XXIII Rule 3 of the Code of Civil Procedure (for short 'Code'). The said application was allowed and vide order dated January 09, 1987, the suit was decreed as per the terms and conditions laid down in the

compromise. Though, against the said judgment and decree, petitioner/JDs filed revision petition, but that was dismissed by this Court vide order dated July 08, 2003. Aggrieved against the order of this Court, petitioner/JDs i.e. Punjab Small Industries and Export Corporation approached the Hon'ble Apex Court vide Civil Appeal No. 590 of 2005, which was allowed and the case was remanded to this Court for fresh decision in the light of observations in the order dated September 26, 2005. However, the revision petition was allowed by this Court vide order dated September 09, 2008. Consequently, the judgment and decree dated January 09, 1987 passed on the basis of compromise, was dismissed and the parties were directed to appear before the learned trial Court on October 15, 2008 but neither the parties nor their counsel appeared before learned trial Court on the said date. As a result whereof, the suit was dismissed in default vide order dated October 15, 2008.

Aggrieved against the order dated October 15, 2008, respondent/Joginder Singh filed an application under Order IX Rule 9 of the Code for the restoration of the suit. However, that application was dismissed vide order dated January 30, 2016. The respondent/plaintiff preferred an appeal challenging the order dated January 30, 2016. The said appeal was allowed vide impugned order dated October 25, 2016 passed by learned Additional District Judge, Jalandhar and the order dated October 15, 2008 passed by trial Court dismissing the suit of respondent/plaintiff under Order IX Rule 8 of the Code was set aside and the suit was restored at its original number and stage. The parties were directed to appear before learned trial Court on November 09, 2016, which is now under challenge before this Court.

While assailing the impugned order, it has been argued by learned

counsel for the petitioners that the same is patently illegal and perverse as well as against the legal proposition applicable to the facts and circumstances of the case in hand. The learned trial Court has gravely erred in ignoring the fact that there was a delay of more than two years in filing an application for restoration of the suit, which is absolutely un-explained. Otherwise, also respondent/plaintiff was being represented through a counsel when this Court had remanded the matter back by learned trial Court vide order dated December 09, 2008. While relying upon the pronouncement of this Court rendered in the case of **Bani Singh vs. State of Haryana; 2010 (3) RCR (Civil) 48**; it has been submitted by the learned counsel for the petitioner that the liberal approach to allow an application of condonation of delay cannot be stretched to such an extent as to render the law of limitation redundant and infructuous. The law of limitation has to be applied with its all rigors, especially, in the circumstances that a right has accrued to the opposite party due to the non-filing of application for condonation within a prescribed period of limitation.

While concluding his arguments, it has further been urged by learned counsel for the petitioners that in view of the facts and circumstances narrated above, impugned order is not sustainable in the eyes of law and is liable to be set aside. Consequently, application under Order IX Rule 9 of the Code deserves to be dismissed, that too, with special cost.

After bestowing due consideration to the afore-said submissions made by learned counsel for the petitioners and scrutinizing the impugned order this Court does not find legal or factual weight in his various submissions and is of the considered view that there is no infirmity, illegality or impropriety in the impugned order.

It is well settled proposition of law that the scope of interference by the revisional court is very limited and is justified only, if the court below has acted arbitrarily, perversely and has passed an order against the legal principles without considering all the relevant record on file. But in the case in hand, no such question emerges.

Undoubtedly, this Court remitted the case back to the trial Court vide order dated September 09, 2008 with a direction to the parties to appear before it on October 15, 2008. Nothing substantive was to be done on that date and just parties were directed to appear. But without considering the said fact, trial Court opted to dismiss the suit on account on non-appearance of the parties. The facts of the case as narrated in para No.2 of this order/judgment reveal that the suit was being contested/resisted hotly by the parties since 1987 but all these facts were ignored by trial Court while passing the order dated September 09, 2008, which cannot be said to be a judicious approach. Not only this, even the trial Court also dismissed an application moved by respondent/plaintiff for its restoration simply on the ground that there is an inordinate delay of about 2 years.

No doubt, there is a delay of more than two years in filing the application for restoration of the suit dismissed in default on September 09, 2008 and no separate application for condonation thereof, has been moved alongwith the application does not *ipso facto* mean that there are no sufficient grounds either to condone the delay or for the restoration of the suit.

As has been observed above, the suit was fixed for appearance of the parties when it was dismissed in default. The same is not legally justified in view of the observations made by Bombay High Court in the case of *Sports*

Fields Construction, Mumbai v. Bombay Municipal Corporation and others;

2011 (3) CCC 728. Otherwise also, there is no requirement to file a separate application for condonation of delay alongwith the application for restoration of the suit because the evidence is to be led by the applicant to prove the sufficient grounds as well as delay in one and the same application.

Here it would also pertinent to mention that under Order XLIII Rule 1 of the CPC, an appeal only lies where an application under Order IX Rule 9 CPC is rejected and not in a situation where an application under Order IX Rule 9 CPC, has been accepted. Meaning thereby, the intention of the legislature is very clear that in case an application under Order IX Rule 9 CPC has been allowed, the matter should be decided on merits. It was only due to the said reason, no appeal has been provided. Thus, this Court is of the considered view that there is no patent illegality or perversity in the impugned order and as such, it does not call for any interference by this Court.

In the light of what has been discussed the above, the instant petition being devoid of any merit, is dismissed.

FEBRUARY 01, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*