

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6725 of 2013 (O&M)
Date of decision: 02.05.2017

Baldev Singh

... Petitioner

Vs.

Kartar Singh (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ramesh Chand Sharma, Advocate
for the petitioner.

Mr. Pritam Saini, Advocate
for respondent No.3.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 19.07.2013 passed by the learned trial Court, dismissing the application of the plaintiffs for restoration of the suit, which was dismissed in default on 30.01.2009, plaintiff No.1 has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare reading of the impugned order would show that although there was some lapse on the part of the plaintiff not to pursue his suit diligently, yet said negligence should not have been viewed so seriously that even his

application for restoration ought to have been dismissed, by passing the impugned order. It goes without saying that petitioner-plaintiff was not going to gain anything in moving the application for restoration beyond 30 days. It was reasonably explained as to how some delay took place, while moving the application for restoration. The delay was also not a long and inordinate one, it being just 39 days. Having said that, this Court feels no hesitation to conclude that the learned trial Court ought to have adopted a liberal approach, while deciding the application for restoration, instead of dismissing the same, only on account of delay of 39 days, thus, the impugned order cannot be sustained.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Every Court of law must grant reasonable opportunity to both the parties to put up their best case before the Court. Nobody should be forced to go home with the grievance that sufficient opportunity was not granted by the learned Court of law. By following this principle of law, learned Court shall achieve twin objects namely; (i) it will avoid multiplicity of litigation between the parties, and (ii) the learned Court would be in a better position to do complete and substantial justice between the parties. However, since the learned trial Court failed to follow the abovesaid principle of law, while passing the impugned order, the same cannot be sustained, for this reason also.

During the course of hearing, learned counsel for respondent No.3 could not raise any meaningful argument in support of the impugned order and rightly so, it being a matter of record. Learned counsel for the applicants-plaintiffs has given reasonable explanation for the delay, pointing out that he wrongly noted down the date of hearing. Such a bonafide mistake ought to have

been ignored by the learned trial Court, because no prejudice was likely to be caused to the defendants. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court exceeded its jurisdiction, while passing the impugned order and the same cannot be sustained, for this reason as well.

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 has been found suffering from patent illegality, the same cannot be sustained. Accordingly, the impugned order dated 19.07.2013 passed by the learned trial Court is hereby set aside. Application of the plaintiff-petitioner for restoration of his suit, which was dismissed in default vide order dated 30.01.2009, would stand allowed and the suit shall be restored to its original number.

The learned trial Court is directed to proceed further with the suit and decide the same at an early date, however, in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, present revision petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

02.05.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No