

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6968 of 2015

Date of decision: 18.01.2017

Sukhwinder Singh and another

... Petitioners

Vs.

Sarwan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Komal Abrol, Advocate for
Mr. Gaurav Mohunta, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present revision petition is directed against the order dated 15.02.2007 (Annexure P-1), whereby suit of the petitioners-plaintiffs was dismissed in default and also the order dated 16.09.2015 (Annexure P-3), whereby their application for restoration of the suit was dismissed.

Notice of motion was issued.

As per service report dated 10.02.2016, respondent was duly served. However, when nobody put appearance on behalf of the respondent, he was proceeded against ex-parte vide order dated 16.02.2016 passed by this Court.

Heard learned counsel for the petitioners.

Placing reliance on a judgment of the Hon'ble Supreme Court in **Ram Nath Sao @ Ram Nath Sahu Vs. Gobardhan Sao, 2002 (2) SCC 1**, learned counsel for the petitioners vehemently contended that learned trial Court miserably failed to appreciate the basic fact that petitioners being the plaintiffs, were not going to gain anything in absenting themselves from the suit for specific

performance filed by them. She further submits that the petitioners had, as a matter of fact, shown sufficient cause explaining the delay of about five years in filing the application for restoration, but the learned trial Court failed to appreciate the same in correct perspective, while passing the impugned order dated 16.09.2015 (Annexure P-3). She prays for allowing the present revision petition.

Having heard learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case, instant revision petition deserves to be accepted. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that the petitioners were the plaintiffs in the suit and they were seeking a decree of specific performance in compliance of the agreement to sell dated 04.06.2001. They had paid the earnest money of Rs.5,20,000/- to the defendant-respondent, towards the part performance of the contract between the parties. Written statement had already been filed by the defendant and the case was listed for 15.02.2007 for filing replication, if any and for settlement of issues.

Perusal of numerous zimini orders produced by learned counsel for the petitioners in para 6 of the petition from pages 4 to 7 of the paper book, would make it crystal clear that learned counsel for the plaintiffs-petitioners had been appearing before the learned trial Court on each and every date of hearing. However, none of the parties appeared on 5.02.2007. The impugned order dated 15.02.2007 came to be passed by the learned trial Court at 1.55 pm. Thus, it would show that the learned trial Court did not wait for the parties even upto the end of Court hours and the impugned order dated 15.02.2007 was passed in haste.

So far as the delay on the part of the petitioners-plaintiffs in moving the application for restoration is concerned, they have tried to explain the same and in the circumstances of the case, learned trial Court ought to have accepted the said explanation as a sufficient one. Learned counsel for the petitioners has been found justified in contending that petitioners being the plaintiffs, were not going to gain anything in absenting themselves from the proceedings initiated by them, seeking a decree of specific performance. Having said that, this Court feels no hesitation to conclude that since the learned trial Court failed to appreciate the true facts and circumstances of the case in the correct perspective, while passing the impugned order, the same cannot be upheld.

An identical controversy fell for consideration before the Hon'ble Supreme Court in **Ram Nath Sao's** case (supra). The law laid down by the Hon'ble Supreme Court in para 11 of the judgment, which can be gainfully followed in the present case, reads as under: -

“Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished

should be the rule and refusal an exception more so when no negligence or inaction or want of bonafide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”

Reverting to the facts and circumstances of the present case, noticed hereinabove, this Court is of the considered view that interest of justice demands that the plaintiffs-petitioners should be granted one more opportunity to get their case decided on merits. It is the settled proposition of law that every Court of law should make an endeavour to decide the lis between the parties on merits, instead of deciding it on technicalities alone. No litigating party should be forced to go home with the grievance that it was not granted due opportunity to put up its best case before the Court for its adjudication. Further, once the defendant had already been put to notice by the learned trial Court and he has filed his written statement as well, no prejudice would be caused to the defendant in allowing the plaintiffs-petitioners to get their case decided on merits.

It is also pertinent to note here that rules of procedure are meant for advancing the case of justice and the same deserve to be considered and interpreted liberally, until and unless an exceptional case is made out for declining such a relief.

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 orders have been found suffering from patent illegality, the same cannot be upheld. Accordingly, the impugned order dated 15.02.2007 (Annexure P-1) and 16.09.2015 (Annexure P-3) are hereby set aside. The revision petition deserves to be accepted and the same is allowed. The civil suit filed by the plaintiffs-petitioners would stand restored to its original number.

Consequently, the learned trial Court is directed to proceed further with the matter from the stage when the impugned order dated 15.02.2007 (Annexure P-1) was passed. Since the suit was filed way back in the year 2004, learned trial Court is directed to ensure early disposal of the civil suit by granting reasonable opportunity to both the parties.

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

[RAMESHWAR SINGH MALIK]
JUDGE

18.01.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No