

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7189 of 2017 (O&M)

Date of Decision: 21.11.2017

Satpal

.....Petitioner

Versus

Rajesh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.P.Sharma, Advocate
for the petitioner.

ANITA CHAUDHRY, J

CM-24110-CII-2017

Application is allowed and Annexures P-4 to P-10 are taken on record.

CR-7189-2017

This petition has been filed under Article 227 of the Constitution of India assailing the order dated 27.9.2017 (Annexure P-1) vide which the application filed by the plaintiff under Order 9 Rule 4 CPC for restoration of the suit, had been dismissed.

I have heard the counsel for the petitioner.

The suit of the plaintiff has been dismissed in default on the first date fixed for evidence of the plaintiff i.e. 28.9.2016. The plaintiff filed an application for restoration of the suit in January 2017. The plea taken was that the counsel was not available on station that day and the plaintiff came to know that the case had been adjourned to 28.11.2016 and when he came to the Court on the next hearing, it was found that the case was not

default and thereafter the application was moved. The trial Court has dismissed the application noting that the case had been called five times on that day and the plaintiff had filed no material to show as to how he came to know that the case was adjourned in November 2016 and it was a false plea.

The submission on behalf of the plaintiff is that it would be harsh on the plaintiff as the counsel for the plaintiff was not available in station that day and had gone to the Sub Division to attend to other cases and the suit was not old and they would make every endeavour to expedite the proceedings and offer all assistance in that direction and the suit may be restored.

Notice is not being issued to the respondents as it would further delay the process.

The suit of the plaintiff was dismissed for one absence. No doubt the default is on the part of the plaintiff and the counsel representing the plaintiff should have been vigilant and should have make a request to the Court before proceeding to attend to the other cases fixed in the Sub Division but the litigant cannot be penalized for that.

The petition is allowed, the suit is restored but on payment of Rs. 5,000/- which would be paid to the other side. The petitioner would appear before the Court below on 4.12.2017. The Court would give notice to the counsel representing the defendants so that the trial can proceed. The petitioner would ensure that he completes his evidence on the dates which are given to him and would not delay the trial.

(ANITA CHAUDHRY)
JUDGE

November 21, 2017

Gurpreet/Sunil

Whether speaking/reasoned : Yes

Whether reportable : No