

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

CR No. 7302 of 2017 (O&M)

Date of Decision: November 14, 2017

Hawa Singh and others

...Petitioners

Versus

Ramphal @ Rampal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Singh Sangwan, Advocate
for the petitioners.

ANITA CHAUDHRY, J.

Certified copy of previous zimni orders have been placed
on record.

The petitioners are aggrieved by the order dated
04.09.2017 passed by the Addl. Civil Judge (Sr. Division), Panipat,
vide which their application seeking restoration of the suit had been
dismissed.

Counsel for the petitioners contends that the plaintiffs' suit
had been dismissed in default on 14.07.2017 when both the counsel
were not present and on coming to know of the dismissal, they had
moved an application seeking restoration and the counsel appearing for
the respondents had given his no objection but still the application was
dismissed. It was urged that a wrong date had been noted and instead

of 14.07.2017 the date noted with them was 24.07.2017 and the plaintiffs should not suffer on account of the fault of the clerk of the counsel.

Notice is not being issued to the respondents as that would further delay the proceedings.

A perusal of the zimni orders show that both the counsel had been appearing on each date. The parties were not present before the National Lok Adalat held on 08.04.2017. The case was adjourned for 18.04.2017 and was to be listed before the Court dealing with the case. On 18.04.2017, there was a request for adjournment on behalf of both the sides and the case was adjourned to 29.05.2017. The lower Court took up the file on 26.05.2017 and adjourned the matter to 14.07.2017 as 29.05.2017 had been declared a holiday. There was also a further order that all the concerned should be informed. It appears that no notices were sent as there is no reflection in the order dated 14.07.2017. In the absence of both the parties, the suit was dismissed. The plaintiffs filed an application for restoration. The application was filed on 29.08.2017. No objection had been given to the application by the other side but the lower Court held that no application for condonation of delay had been filed and since it had been filed beyond limitation, therefore, the suit could not be restored.

The order has to be set aside as seemingly no notice had been sent to the counsel or the parties with respect to the change of date. The case of the plaintiffs was that they had wrongly noted the

date and then moved an application within one month of the date which they had noted. The Court should not have been taken such a strict view when the case was at the initial stages. The Courts have to impart justice and not dispose off matters in the manner it has been done.

The suit is ordered to be restored. The petitioners would appear before the lower Court on 04.12.2017. The other side would also be informed. If no-one appears for the respondents, the Court would issue notice to them.

The petition is allowed.

(ANITA CHAUDHRY)
JUDGE

November 14, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No