

CR No.7744 of 2016 (O&M)

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

Sr. No.106

**CR No.7744 of 2016 (O&M)
DECIDED ON: February 28, 2017**

SANJAI KUMAR AND ANOTHER

..PETITIONERS

VERSUS

YOGENDER SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Manoj Kaushik, Advocate,
for the petitioners.

JASPAL SINGH, J.

CM No.23272-CII of 2016

Application is allowed as prayed for.

CR No.7744 of 2016

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated August 29, 2016 (Annexure P-1) passed by learned Additional District Judge, Palwal, whereby an application for restoration of the appeal titled as “Sanjai Kumar vs. Yogender & others” was dismissed, in which,

CR No.7744 of 2016 (O&M)

the challenge was laid to the order dated March 26, 2014 passed by the learned Additional Civil Judge (Sr. Divn.) Hathin, vide which, an application for restoration of the suit was dismissed.

2. The facts rise to the instant revision petition are that the petitioner No.2-Het Ram and father of petitioner No.1 (late Sh.Nain Singh) had filed the suit for declaration and permanent injunction against the respondents/defendants. But when the said suit reached at the final stage of arguments, it was dismissed for non-prosecution on February 14, 2007. Since, plaintiffs were real brothers, plaintiff No.1-Nain Singh used to look after the property as well as the court proceedings, whereas the plaintiff No.2-Het Ram used to serve in New Delhi, Municipal Corporation, Delhi and as such, he has been residing there. The plaintiff No.1-Nain Singh got detected the disease of cancer. Ultimately, after lot of sufferings, he was taken away by the nature on July 16, 2007. After the demise of plaintiff No.1-Nain Singh, petitioner No.1-Sanjai Kumar, his son and his uncle Het Ram-plaintiff No.2 enquired about the fate of the civil suit and they came to know that the suit filed by Nain Singh and others was dismissed for non-prosecution on February 14, 2007. Thereafter, they prepared/filed an application dated December 12, 2008, after collecting the necessary documents. However, aforesaid application for restoration of suit was dismissed by the trial court vide order dated March 26, 2014 on the ground that it was not supported by the medical evidence of Nain Singh and further that there was no plausible explanation for the condonation of delay in filing an application for restoration.

3. Aggrieved against the said order dated March 26, 2014, the petitioners preferred an appeal before the District Judge, which was entrusted to the Additional District Judge, Palwal along with memorandum of appeal. The petitioners also submitted the medical record of Nain Singh-plaintiff No.1 issued by Dr. Ram Manohar Lohia Hospital, New Delhi along with the death certificate. However, an appeal preferred by the petitioners was also dismissed for non-prosecution vide order dated October 28, 2014 for restoration of which an application dated October 14, 2015 was filed but that was also dismissed vide impugned order dated August 29, 2016 passed by the lower appellate court, which necessitated the filing of the instant revision petition.

4. While assailing the impugned orders dated August 29, 2016 as well as March 26, 2014, it has been argued with vehemence by the learned counsel for the petitioners that the same are absolutely against the evidence available on record and settled canons of law. In fact, when appeal was fixed for hearing on October 28, 2014, their counsel had informed the petitioners that the adjournment has already been obtained and they are not required to appear in the court and further that they will be informed and called as and when their presence shall be required in the court. Since, learned counsel did not inform either of the petitioners that an appeal has been dismissed for non-prosecution. Thus, application for its restoration also could not be filed within a period of limitation. In fact, Mr. Manoj Chaudhary, Advocate who has been appearing on their behalf could not appear in the court when the said matter was taken up as he was seriously ill and was not in a position to appear before the court. The aforesaid act of

the counsel as well as petitioners was neither intentional nor willful, but they could not appear before the Appellate Court on the date fixed for the reasons beyond their control.

5. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioners but does not find the same to be of any legal weight.

6. Undisputably, an appeal preferred by the petitioners was dismissed for want of prosecution vide order dated October 28, 2014 as neither the counsel nor either of the petitioners opted to appear in the court. However, an application for restoration thereof was moved on October 14, 2015 i.e. after the expire of about one year. An application under Order XLI Rule 19 of the Code of Civil Procedure, 1908 was required to be filed within a period of 30 days from the date of dismissal. But in the case in hand, there is no explanation what to talk of any plausible explanation or reason for such an inordinate delay. No doubt, condonation of delay is a matter of discretion of the court but it has to be exercised in a judicious manner and according to the well established principles. The proof of sufficient cause is a condition precedent for the exercise of discretion vested in the court. At the same time, while considering the matter with regard to the condonation of delay, the court should not lose sight of the fact that by not taking steps within the stipulated period, a valuable right has accrued to the other party which cannot be scuttled down or defeated by condoning the delay in a routine manner. The court is required to strike balance between the resultant effect of the order it was going to pass upon the parties either way.

CR No.7744 of 2016 (O&M)

7. Adverting to the facts of the case in hand, an explanation furnished by the petitioners does not appeal to reason. It cannot be said that the parties will not appear in the court or enquire about the fate of their appeal after its preference, from their counsel for a period of one year or so. Thus, it clearly reflects that there was negligence and gross inaction on the part of the applicant/appellant. Learned trial court has rightly concluded that neither there is a plausible explanation for the condonation of delay nor the petitioners could establish the sufficient cause for the restoration of the appeal, dismissed for want of prosecution on October 28, 2014. This court does not find any infirmity, illegality or perversity in the impugned orders dated August 29, 2016 and March 26, 2014. Rather, this court is of the considered view that the same are absolutely in consonance with the evidence available on file and settled canons of law. As such, these orders do not call for any interference by this court.

8. In the light of what has been discussed above, instant petition is dismissed, whereby the impugned orders dated August 29, 2016 and March 26, 2014 are upheld.

9. No order as to costs.

February 28, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No