

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

CR No.7574 of 2017

Date of Decision: 03.11.2017

Shyam Sunder

...Petitioner(s)

Versus

Krishan Chand and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

The petitioner has challenged the order dated 22.09.2017 passed by Civil Judge (Senior Division), Gurgaon and which has ordered the restoration of the suit which was dismissed in default on 03.07.2017.

I have heard counsel for the petitioner.

A suit for possession by way of partition had been filed by the plaintiff. The case was fixed for 03.07.2017. No one appeared for the plaintiff and even for the defendant and the case was dismissed in default for non appearance of the plaintiff.

Learned counsel for the petitioner contends that the respondents filed an application for restoration as the date had been wrongly noted by the clerk as 06.07.2017 and the trial Court has restored the suit without even verifying the facts from the diary of the lawyer nor any affidavit of the counsel or of the clerk had been

appended and the case could not have been restored simply because it was an old case.

A perusal of the impugned order shows that an application for restoration of the suit had been filed within a week of dismissal of the suit. There appears to be an error in the date though. I find that even the defendant was not present when the case was taken up i.e. on 03.07.2017. The petitioner did not append the application which was moved by the plaintiff seeking restoration of the case instead Annexure P-5 was filed which relates to another suit titled as '*Shankar Devi Vs. Kishan Chand*'. The application admittedly had been moved within 30 days and the reasons were genuine.

There is no infirmity in the order. The revision petition is dismissed.

November 03, 2017*ps-l***(ANITA CHAUDHRY)
JUDGE****Whether Reasoned/Speaking****Yes/No****Whether Reportable****Yes/No**