

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

-.-

Civil Revision 7697 of 2017
Date of decision: 08.11.2017

Gurwinder Singh Virk

..... Petitioner

Versus

Gurdeep Singh and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Bhupinder Ghai, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 26.09.2017 passed by the Civil Judge (Junior Division), Fatehgarh Sahib whereby application of the petitioner for restoration of the suit has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed suit for permanent injunction in the year 2007 that came to be dismissed for non-prosecution on 09.01.2012. In the said suit, counter claim was filed by Gurdeep Singh and Balraj Kaur, defendants No. 1 and 2. The counter claimants filed an application under Order 8 Rule 6 read with Section 151 of the Code of Civil Procedure for proceeding with the counter claim that came to be dismissed vide order dated 18.10.2014. The said order became subject matter of challenge before this Court in CR No. 283 of 2015 that came to be decided in favour of the counter claimants vide judgment dated 17.05.2016

(Annexure P6). It is argued that as the petitioner was under an impression that in case the counter claim is restored for decision on merits, suit filed by him would also be restored and for that reason, he did not file application for restoration of the suit until the counter claim was restored for decision on merits. It is further submitted that a serious prejudice shall be caused to the petitioner in case the suit is not restored and decided on merits, the relief prayed for may be allowed subject to heavy costs to compensate the respondents/defendants.

I have heard Counsel for the petitioner and perused the paper book particularly various annexures appended with the petition.

Indisputably, the petitioner instituted the suit for injunction in the year 2007 that came to be dismissed by the trial Court in January 2012. Since the suit of the petitioner was dismissed in default, the trial Court did not decide the counter claim though the same was required to be decided independently being a cross suit.

Counsel for the petitioner, in response to a query would inform that the application for deciding the counter claim was instituted in the year 2014 whereby the petitioner certainly got knowledge of dismissal of suit in default in January 2012. The petitioner was represented by a Counsel in the application filed by the counter claimants and so also in Civil Revision No. 283 of 2015 filed by the counter claimants to assail order dated 18.10.2014 passed by the trial Court. As per the settled position in law, ignorance of law is no excuse. There is no justifiable reason for failure of the petitioner to file an application for restoration of the suit at least immediately after his appearance in the application filed by the counter claimants seeking adjudication of counter claim on merits. It appears to the Court that as soon

as counter claim filed by the defendants was restored for adjudication by this Court, the petitioner moved the instant application for restoration of the suit. The trial Court has held that the application for restoration of suit was filed after five years and is barred by limitation. As there is no patent error in this finding, interference in exercise of power of superintendence under Article 227 of the Constitution of India is not justified.

Dismissed.

(Rekha Mittal)
Judge

08.11.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No