

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 230

Civil Revision No.8203 of 2015 (O & M)
Date of Decision: May 23, 2017

Krishna

..... PETITIONER

VERSUS

Rajina Rathaur & another

..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. Hardip Singh, Advocate, for the petitioner.

Mr. Sharad Aggarwal, Advocate, for the respondents.

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Jaspal Singh, J

1. Challenge in this revision petition is to Order dated August 07, 2015 passed by the Additional Civil Judge (Senior Division), Dera Bassi, District SAS Nagar (Mohali) whereby an application moved by the petitioner – plaintiff for restoration of the suit captioned as ‘Krishna vs. Rajina Rathaur & another’ which was dismissed in default, has been dismissed.

2. Undisputably, facts leading to filing of instant petition are that petitioner – plaintiff filed a suit for possession by way of specific performance of agreement to sell dated March 14, 2006. Since respondents - defendants did not appear despite service before the trial court, they were proceeded against exparte and on the strength of preliminary evidence

adduced by the petitioner – plaintiff, suit was decreed exparte vide judgment & decree dated January 27, 2009. Since respondent No.1 has since expired, respondent No.2 – defendant No.2 filed an application under Order IX Rule 13 CPC on May 31, 2010 for setting aside exparte judgment & decree dated January 27, 2009 and vide order dated May 30, 2012, when the case was fixed for filing written statement by respondent – defendant No.2 on July 27, 2012, petitioner – plaintiff could not appear, as a result whereof, suit was dismissed in default. An application filed under Order IX Rule 4 CPC for restoration of the suit, dismissed in default on July 27, 2012, was dismissed vide impugned order dated August 07, 2015, which necessitated filing of instant revision petition.

3. Assailing impugned order dated August 07, 2015, it has been argued by learned counsel for the petitioner – plaintiff that same is absolutely against the settled canons of law as well as principles of natural justice. Infact, learned trial court has failed to appreciate the fact that case was fixed on July 27, 2012 for written statement of defendant(s). Nothing worthwhile was to be done on the said date by the petitioner. Thus, it cannot be presumed that petitioner – plaintiff deliberately did not appear on that date. Moreover, presence of petitioner was not required on the said date. His counsel also could not appear. For the lapse and omission on the part of his counsel, petitioner – plaintiff should not be made to suffer. Moreover, respondent – defendant was supposed to file written statement on July 27, 2012 which was not done, rather, suit was dismissed wrongly and illegally. Similarly, an application filed by the petitioner – plaintiff for restoration was also dismissed for the simple reason that it was filed beyond the period of limitation provided for filing the application i.e. 30 days of the dismissal of the suit in default.

4. While relying upon judgment of this Court passed in case of **Jatinder Singh Bhatti vs. Smt. Nimrita Naresh Kaur & others, 2016(4) CCC 102 (P &H)**, it has been urged by learned counsel for the petitioner that in the said suit, application for restoration of the suit was dismissed against defendant No.1 for non-filing of process fee. Suit was restored to its original position on the basis of an application moved after delay of 15 years by holding that in such like matters, application should not be dismissed on the ground of limitation and the Court is obliged to take a lenient view. Moreover, application was allowed so as to give finality to the litigation as defendant No.1 may not move an application for the de-novo trial at a subsequent stage, and order of the trial court was upheld.

5. While concluding his arguments, it has been submitted by learned counsel for the petitioner that in the instant case, respondents – defendants were proceeded against exparte and exparte judgment & decree was passed in favour of the petitioner which was subsequently set aside at the instance of respondent – defendant No.2. After the setting aside of exparte judgment & decree dated January 27, 2009, respondent – defendant was directed to file written statement on July 27, 2012 and on the same day, suit was dismissed in default. The mere fact that application has been filed after a period of 30 days from the date of dismissal of suit in default, does not mean that suit cannot be restored for final adjudication of the matter in controversy, especially in the circumstances that petitioner – plaintiff has been continuously litigating since the date of institution of suit, and at the instance of respondent – defendant, exparte judgment & decree dated January 27, 2009 was set aside. Thus, there is sufficient ground for setting aside of impugned order whereby suit was dismissed in default and for restoration thereof.

6. On the other hand, learned counsel for the respondents has supported the impugned order while submitting that there is no infirmity, illegality and perversity therein and same is absolutely in consonance with the settled principles of law. The trial court has rightly dismissed the application for restoration as same was filed beyond a period of limitation prescribed under Article 122 of Limitation Act, 1963. Thus, no interference by this Court is justified and the instant petition deserves to be dismissed.

7. After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned order, this Court is of the considered view that same is not sustainable in the eyes of law and deserves to be set aside with a view to advance of cause of justice as well as to decide the matter in controversy on merits.

8. In **Karam Pal vs. Ramesh Jain, 2011(6) Lawdigital.in 420 (P & H): 2009(2) RCR (Civil) 613**, a liberal view was taken by this Court on the point of condonation of delay that even if there is some lapse on the part of petitioner or his counsel, party should not be made to suffer who is regularly appearing in the Court especially when other party can be compensated with the payment of costs.

9. As regards to limitation period and delay of almost 15 years in filing the application, Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and others, 1987 AIR SC 1353** and **Firdous Omer (D) by LRs. and others vs. Bankim Chandra Daw (D) by LRs and others, 2006 (4) RCR (Civil) 120**, observed that in such like matters, application should not be dismissed on the ground of limitation and a lenient view is to be taken while condoning the delay. The said view of the Hon'ble Apex Court has been followed by

Bhargava, 2000(2) Civil Court Cases 472 (Delhi) : 2000(3) RCR (Civil)

17. As discussed above, the suit was dismissed in default on July 27, 2012 and application for restoration was moved on October 28, 2012. Moreover, the suit was also listed after remand for the presence of parties and filing written statement by the defendant. Moreover, in the said case, it has been observed that the Court below has accepted the application under Order 9 Rule 4 CPC so as to give finality to the litigation because defendant No.1 may not move an application for de-novo trial at a subsequent stage. Thus, while relying upon the above referred facts in **Jatinder Singh Bhatti's case (supra)**, it was held that the lower court has rightly decided the application vide order dated September 03, 2014.

10. Adverting to the facts of the case in hand, petitioner – plaintiff cannot be made to suffer for lapse or omission on the part of his counsel. Thus, this Court is of the considered view that impugned order dated August 07, 2015 is liable to be set aside and petition deserves to be allowed.

11. Ordered accordingly.

12. A copy of this order be sent to the Court concerned for compliance.

May 23, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No