

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

CR No. 8675 of 2016 (O&M)
DECIDED ON: MARCH 01, 2017

PARKASH KAUR

.....PETITIONER

VERSUS

SAJJAN SINGH & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ramandeep Singh Pandher, Advocate
for the petitioner.

JASPAL SINGH, J

Challenge in this revision petition preferred under Article 227 of the Constitution of India is to the order dated September 07, 2016 passed by learned Civil Judge (Sr. Division), Fatehgarh Sahib, whereby, an application filed by the petitioner for restoration of restoration applications dated December 01, 2012 and January 23, 2014 filed for restoration of civil suit titled as '**Parkash Kaur vs. Sajjan Singh & others**'; has been dismissed.

While assailing the impugned order, it has been submitted by learned counsel for the petitioner that the same is absolutely illegal and perverse and against the principles of natural justice. The learned trial Court has ignored the fact that the petitioner is an illiterate and a poor lady aged about 60 years and was wholly dependent upon her counsel for the court proceedings. The

application bearing CM/15/2014 was pending before Civil Judge (Sr. Division), Fatehgarh Sahib, which was earlier dismissed on April 28, 2015. On that day, petitioner could not appear. In fact, she was told by her counsel that she is not required to attend the court on each and every date of hearing and he would appear on her behalf. On April 28, 2015, the petitioner could not appear in the Court being under impression that her counsel would appear as the case was fixed for the pronouncement of final order on the application. But on that day, her counsel could not appear as he was busy in some other court. As such, the application moved by the petitioner was dismissed on account of her non-appearance as well as her counsel.

It has further been submitted by learned counsel for the petitioner that non-appearance of the petitioner as well as her counsel is neither intentional nor willful but has occurred on account of the facts referred to above. Subsequent thereto, petitioner visited the court on April 30, 2015 to enquire about the fate of her application and she came to know that her application has been dismissed in default on April 28, 2015. Accordingly, she moved another application for the restoration thereof, without any delay on April 30, 2015. While concluding his arguments it has further been submitted by learned counsel for the petitioner that in case the application for restoration of application is not allowed, petitioner would suffer huge loss and will not deprive of her valuable property.

This Court has given an anxious thought to the various submissions made by learned counsel for the petitioner but does not find any merit therein.

A close scrutiny of the impugned order transpires that suit titled 'Parkash Kaur vs. Sajjan Singh & others' was dismissed in default on November

02, 2012 on account of non-appearance of petitioner as well as her counsel. Thereafter, she moved an application for restoration of the said suit. The said application for restoration of the suit was also dismissed under Order IX Rule 8 of the Code of Civil Procedure on January 22, 2014 as neither the applicant/petitioner nor her counsel appeared on the date fixed before the Court. Subsequent thereto, petitioner preferred another application dated January 23, 2014 for restoration of her application dated December 01, 2012, which too, was dismissed for non prosecution vide order dated April 24, 2015 due to her non-appearance. The moving of such a number of applications as well as non appearance of the petitioner on the date fixed is suggestive of the fact that applicant/petitioner has adopted a casual approach and is not serious to pursue the civil suit or the applications for restoration thereof. It is also evident from the impugned order that the petitioner is filing the restoration applications one after the other for the last almost four years.

Thus, in the given circumstances, the learned trial Court has rightly come to the conclusion that there is no sufficient reason to restore the application for restoration of application what to talk about the restoration of suit, which was dismissed in the month of December 2012.

In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such it stands dismissed.

MARCH 01, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*