

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

CR No.917 of 2017 (O&M).
Date of Decision: 10.05.2017.

Sohan LalPetitioner.

VERSUS

Ram KumarRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Chirag Wadhwa, Advocate for the petitioner.

Mr. S.S. Parmar, Advocate for the respondent.

SNEH PRASHAR, J.

The instant revision petition under Article 227 of the Constitution of India has been filed assailing the order dated 05.08.2015 passed by learned District Judge, Panipat whereby Civil Appeal No.69 of 2013 preferred by the petitioner against the order of dismissal of his application under Order IX Rule 13 of the Civil Procedure Code (for short, 'CPC') was dismissed in default. The order dated 23.11.2016, vide which the application for restoration of the appeal was dismissed, has also been assailed by way of this revision petition.

A suit for mandatory injunction seeking direction to the defendant-petitioner to remove illegal encroachment made on his (respondent-plaintiff's) land and to remove the *Chabutra* shown with letters EFGH and in red colour in the site plan attached with the plaint, was filed

by the respondent. On notice of the suit, the petitioner appeared through an

Advocate who filed his memo of appearance but when the case was fixed for filing written statement, neither the Advocate appeared nor the petitioner appeared himself and was proceeded against exparte. The suit of the plaintiff was decreed exparte by learned Additional Civil Judge (Senior Division), Panipat vide judgment and decree dated 08.04.2006. The petitioner then filed an application invoking the provisions of Order IX Rule 13 read with Section 151 CPC on 21.12.2011 for setting aside the exparte judgment and decree. The plea of the petitioner was that the matter in dispute had been compromised in Panchayat. He had requested the respondent-plaintiff to appear in the Court for compromise and the respondent-plaintiff had promised to withdraw the case, but he did not do so and cheated him. The averments of the petitioner were denied by the respondent-plaintiff. Learned trial Court framed issues on the rival contentions of the parties. Both the parties adduced oral and documentary evidence. Considering the evidence led by the parties, learned trial court dismissed the application of the petitioner vide order dated 06.04.2013 finding that he had made false averments in his application and his deposition was unreliable. The petitioner preferred an appeal against the said order on 08.05.2013 which was ultimately dismissed in default by learned District Judge, Panipat vide order dated 05.08.2015 on account of non appearance of the petitioner. Thereafter, the petitioner filed an application for restoration of the appeal. There again finding the averments of the petitioner in the application to be false, the application was dismissed by learned District Judge vide order dated 23.11.2016.

Aggrieved by the order dated 05.08.2015 vide which his appeal

his application for restoration of the appeal, the petitioner has preferred the instant revision petition.

The submissions made by Mr. Chirag Wadhwa, learned counsel representing the petitioner and Mr. S.S. Parmar, learned counsel representing the respondent have been heard.

Learned counsel for the petitioner argued that the order dated 05.08.2015 passed by learned District Judge, Panipat dismissing the appeal of the petitioner in default is illegal and perverse. The absence of the petitioner/ his counsel on the date fixed was not intentional. It was due to wrong noting of the date that the counsel could not appear. Since it was incumbent upon the Court to dispose of the appeal on merits, learned District Judge should have given the petitioner one opportunity to appear and argue the case when he filed an application for restoration of the appeal that had been dismissed in default. To support his argument that the appeal must be decided on merits, learned counsel relied upon **Sri Ram Mahadeo Flour and Oil Mills Kanpur vs. The Cantonment Board Kanpur and another, 1984 AIR (Allahabad) 384.**

On the other hand, learned counsel for the respondent argued that at no stage the petitioner had come to the Court with clean hands. He thrice appeared in the Court during pendency of the suit filed by the respondent-plaintiff but every time there was a default in appearance on his part. It was on the said ground that his application under Order IX Rule 13 CPC was dismissed. Before learned District Judge also, he falsely pleaded that the order regarding dismissal of his appeal had come to his notice on 25.08.2015 whereas it was found that the dismissal of appeal was in his

noted a wrong date of hearing was disbelieved. As the application for restoration of the appeal had not been filed within 30 days from the date of knowledge, it deserved outright dismissal. Learned counsel relied upon **Ram Narain Singh vs. Gurinder Kaur, 1997(4) R.C.R. (Civil) 301.**

A perusal of the impugned order dated 23.11.2016 passed by learned District Judge, Panipat shows that the application for restoration of the appeal was filed on 05.10.2015 i.e. after expiry of the period of limitation of 30 days for filing such application. Although an application for condonation of delay was also filed, copy of which has not been annexed with the instant petition, but as observed by learned District Judge, what to say of explaining a sufficient cause for the delay, no explanation at all was furnished for the delay in filing the application. Anyhow, learned District Judge proceeded to scrutinize the application on merits and found that the plea raised by the petitioner was that his counsel had wrongly noted the date of hearing as 25.08.2015 in place of 05.08.2015 because of which he could not appear on the date of hearing. Contrary to the said averment, the certified copy of the order dated 05.08.2015, attached with the application for restoration, revealed that an application for obtaining the certified copy of the order had been given on 17.08.2015. It was rightly observed that if at all, the counsel for the petitioner had wrongly noted the date of hearing as 25.08.2015, he would have come to know about dismissal of appeal on that date. When the facts indicated that the petitioner applied for obtaining copy of the order dated 05.08.2015 on 17.08.2015, it was clear that the dismissal of the appeal was in notice of the petitioner much prior to 25.08.2015 the date quoted by him to plead when the dismissal of the appeal came to his knowledge.

In Sri Ram Mahadeo Flour and Oil Mills Kanpur's case (supra), provisions of Sections 84 to 88 of the Cantonments Act, 1924 were interpreted and it was held that there is nothing in these provisions enabling the prescribing authority to refrain from going into the merits of the appeal if the appellant is not present before it.

The facts in hand are completely different. The appeal of the petitioner was dismissed in default on account of non appearance of the petitioner/ his counsel. The application for restoration of the appeal had been filed after expiry of the period of limitation and the reason mentioned to explain why the application could not be filed within the prescribed period was found to be false which led the Court to conclude that the petitioner had committed a deliberate default of appearance on the date when the impugned order dismissing his appeal in default was passed and, therefore, there was no scope for restoration of the appeal. Even though as observed above in his application for condonation of delay in filing the application for restoration of the appeal, the petitioner furnished no explanation indicating the facts that precluded him from filing the application in time, the application was otherwise also incompetent to support his prayer because the prayer was that the petitioner gained knowledge with regard to dismissal of his appeal on 25.08.2015, whereas his own document proved that he knew about the dismissal of the appeal much prior to 17.08.2015. There was no prayer to condone the delay from any prior date or atleast from the said date i.e. 17.08.2015.

A perusal of the order dated 06.04.2013 passed by learned trial Court dismissing his application under Order IX Rule 13 read with Section

appeared in the Court during trial of the case, but wrongly pleaded that he had put in appearance only once in the Court. Otherwise also, he had due knowledge of the suit but had deliberately walked out of the proceedings. Hence, the deposition made by the petitioner was held to be false and unbelievable because of which the said application was dismissed.

In the above premise, seen from all angles, neither the orders passed by learned District Judge nor even learned trial court suffers from any illegality, perversity or jurisdictional error warranting interference and the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

10.05.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**