

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

FAO No. 4654 of 2013 (O & M)

Date of decision: 08.05.2017

Bhim Singh

....Appellant(s)

Versus

General Public and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. P.S. Rana, Advocate,
for the appellant.

Ms. Ekta Thakur, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The present appeal is directed against the order dated 05.03.2013 whereby, the Additional District Judge, Chandigarh has rejected the application filed under Order 41 Rule 19 CPC for restoring the appeal to its original number. The reasoning given by the Court is that the appellant was not a layman as held out and that he was not aware of the Court proceedings and it was a false plea given in support of the application. The appeal had been dismissed on 03.01.2007 and the application had only been filed on 06.01.2010 on the ground that the date of knowledge was the date when he had received notice of the other case. It was also noticed that the counsel who was conducting the appeal had not been issued any notice regarding the non-deposit of the publication charges and neither any complaint had been filed against him. The application filed also was not in a proper format as it was not accompanied by any affidavit and not attested by the notary public and, therefore, the averments contained were not

supported by an affidavit. Resultantly, it was held that the application moved was beyond the period of limitation and the re-admission was denied.

Counsel for the appellant has submitted that the matter should be decided on merits and an opportunity as such should be given so that the appeal can be decided on merits.

A perusal of the evidence led in support of the application would go on to show that it has come out that the appellant was an auditor in the Chandigarh Transport Undertaking and aged about 54 years and had been posted through out his service in U.T., Chandigarh. Three cases of his were pending before the Court of Sh. C.L. Mohal, Additional Civil Judge (Sr. Divn.), Chandigarh and it was his allegation that he had given the publication charges to his counsel. It was also admitted by him that on account of the non-deposit of charges, he had not issued any notices as such to the counsel nor filed any complaint against him. It is not disputed that the appeal was dismissed on 03.01.2007 on account of the non-deposit of the publication charges since general public was respondent no. 1 and publication had been ordered on 18.09.2006. It is to be noticed on 03.09.2006 that for want of publication charges, matter was adjourned and compliance of the order was to be made for 03.01.2007. On the said date, none had come forth on behalf of the appellant and resultantly, his appeal was dismissed in default on the ground that the appellant was not interested to pursue the appeal. Thus, for three long years, the appeal was pending since it was filed on 23.02.2004. Thereafter, even after dismissal, the appellant chose to go into a slumber knowing very well that he was to comply with the orders of the Court and deposit publication charges. His

alleged date of knowledge was on the ground that he was served a notice in some other proceedings and, therefore, he filed the application for readmission. The provisions of Order 41 Rule 19 CPC provide that sufficient cause should be made out so that the Appellate Court is satisfied to readmit the appeal. In the present case, as noticed, there has been lapse on the part of the appellant at two stages, one for non-deposit of publication charges and secondly to file the application for re-admission after a period of 3 years, being fully aware of the pendency of the litigation. Thus, there is no sufficient cause as such made out to condone the lapse as such for re-admitting the appeal.

In such circumstances, this Court is of the opinion that the order which has been passed does not warrant any interference and the same is liable to be upheld. Accordingly, finding no merit in the present appeal, the same is dismissed.

08.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No