

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2108 of 2016(O&M)

Date of Order: 09.03.2018

Ashrafi (since deceased) through LRs and others

..Petitioners

Versus

Raj Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Navneet Singh, Advocate,
for the petitioners.

Mr. Amit Jain, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

C.M.No.4869-CII of 2018

Allowed as prayed for.

Annexures P-5 and P-6 are taken on record.

C.M.No.6092-CII-2016

Prayer in this application is for bringing on record the legal representatives of Ashrafi-petitioner no.1.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 2 of the application are brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application, is taken on record.

MAIN

Plaintiff no.2 is in revision petition against the order passed by the learned trial court refusing to restore the suit, which was dismissed in default.

Although, normally the courts do not dismiss the application for restoration of the case which was dismissed for non-prosecution and allow the parties to contest the suits on merits, however, if the facts as pleaded are apparent and a party is found to be misusing the process, the courts should not grant indulgence to such party. In the present case, the suit was instituted by two plaintiffs in the year 2006, namely, Ashrafi and Ramwati(petitioner no.2), Ashrafi is said to have died on 03.04.2009 and proceeding in the suit continued. The suit was dismissed in default after the plaintiff had been granted sufficient opportunities to lead evidence and their evidence was closed by Court order dated 31.01.2012.

On 31.01.2012, the suit was also dismissed for non appearance of the plaintiff or her counsel. She filed an application for restoration of the suit on the same day by asserting thus:-

“That as per date, the plaintiff kept on sitting in the court of Sh. Vijay Singh, Civil Judge, Senior Division, Gurgaon, but when the case was not found in the cause list of that then the plaintiff and her counsel tried to trace out the case and came to know that the case has been transferred to your Hon'ble Court and till then the case was dismissed in default on 2 P.M.”

The Court on the basis of the assertions made, restored the suit vide order dated 30.03.2012. Again the position remained same. Even after restoration, the plaintiff did not take any step. The suit was once again dismissed for non-prosecution vide order dated 27.10.2012 as neither the

plaintiff nor her counsel appeared.

Plaintiff thereafter did not take any step for more than 2 years. The application for restoration was filed on 25.11.2014, asserting that she came to know of the dismissal of the suit when some members of the family came to the civil court and met a new counsel, who inspected the file.

Learned trial court after appreciating the evidence available on the file, held that the version of the applicant cannot be believed. The court has noticed that limitation for filing the said application is 30 days from the date of dismissal and even no application for condonation of delay has been moved.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the documents filed in the paper book.

This Court is of the opinion that the second application for restoration filed after a period of more than 2 years is clearly abuse of the process of Court. The suit instituted in the year 2006, is being prolonged by filing repeated applications for restoration of the suit. This time the application for restoration had been filed after a period of more than 2 years. The pleadings of the petitioner in the application dated 25.11.2014 and in the application dated 31.01.2012 are absolutely contradictory. In the first application, dated 31.01.2012, plaintiff has asserted that she has come to the court but did not find the case in the cause list. She along with her counsel tried to find out the case but the case was dismissed for non-prosecution. The court by taking a lenient view, restored the case.

Now by way of this application dated 25.11.2014, plaintiff is asserting that she does not know anything about the case as other plaintiff

Ashrafi was handling the suit. She has submitted in the application that she came to know only about the pendency of the suit and its dismissal one week ago. It may be noticed that Ashrafi died on 03.04.2009.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the orders under challenge.

The revision petition is dismissed.

March 09, 2018
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(ANIL KSHETARPAL)
JUDGE

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