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

**Civil Revision No.2780 of 2013 (O&M)
Date of Decision: 06.08.2018**

AMARJIT KAUR

.....Petitioner

Vs

JASBIR KAUR AND ORS.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Satvir Singh, Advocate for
Mr. A.S. Manaise, Advocate
for the petitioner.

Ms. Priya Deep, Advocate for
Mr. A.S. Khara, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J. (Oral)

[1]. In this revision petition order dated 05.10.2012 passed by the Addl. District Judge, Gurdaspur has been assailed vide which application for restoration of the appeal was dismissed.

[2]. Learned counsel for the petitioner submitted that respondents No.3 and 4 were represented by Mr. Amit Gupta, Advocate as per order dated 16.05.2018.

[3]. Perusal of the impugned order would show that the application for restoration of the appeal was filed under Order 41 Rule 19 CPC on the ground that the appeal was dismissed

in default on 17.02.2010 due to wrong recording of date by the appellants. Due to the aforesaid mistake, learned counsel for the appellants could not appear on 17.02.2010 and the appeal was dismissed in default.

[4]. The application was contested by the respondents on the ground that the application for treating the appellants as indigent person was pending for evidence, but despite availing numerous opportunities, the applicants did not produce any evidence for declaring them as indigent person. On 17.02.2010, the application along with appeal was dismissed for non-prosecution.

[5]. The application was filed on 16.03.2010, when the appellants came to know about the said order on 16.03.2010 from their counsel. The application was dismissed by the lower Appellate Court only on the ground that the application was typed on 13.03.2010 and even an affidavit was executed on 13.03.2010 and the alleged disclosure about the knowledge of dismissal of the application/appeal on 16.03.2010 was held to be farce.

[6]. On due consideration of the matter it has been found that the application was filed within one month from the date of dismissal of the application/appeal in default. The impugned order appears to be harsh. The application/appeal is required to

be decided on merits. The omission on behalf of the petitioner/appellants before the lower Appellate Court was not such as it would invite curtailment of further right of appeal on such technicality.

[7]. In view of above, this revision petition is allowed. The impugned dated 05.10.2012 passed by the Addl. District Judge, Gurdaspur is set aside. Lower Appellate Court is directed to decide the application/appeal in accordance with law.

[8]. Both the parties are directed to appeal before the lower Appellate Court on 29.08.2018.

August 06, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No