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

**Civil Revision No.259 of 2017
Date of Decision: 08.08.2018**

KESAR SINGH & OTHERS

.....Petitioners

Vs

NIRMALA DEVI & OTHERS

....Respondents

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

Present: Mr. R.K. Saini, Advocate
for the petitioners.

Mr. J.K. Chauhan, Advocate
for respondents No.2.

Mr. Anuj Balyan, Advocate
for respondents No.3 and 4.

RAJ MOHAN SINGH, J. (Oral)

[1]. Suit of the plaintiffs/petitioners was dismissed in default vide order dated 01.12.2015 passed by the Civil Judge (Jr. Divn.) Panchkula. An application was filed for restoration of the suit on 07.12.2015 on the ground that in fact due to wrong noting of date i.e. 07.12.2015 instead of 01.12.2015, the counsel could not appear on 01.12.2015 and the suit was dismissed in default. The application for restoration of the suit was filed on 07.12.2015, which was dismissed vide order dated

20.10.2016.

[2]. As per Order 43 Rule 1(c) CPC, the aforesaid order was appealable. An appeal was filed before the lower Appellate Court, but the same was dismissed as not maintainable by observing that civil revision was maintainable against the order dated 20.10.2016 which was alleged to be under Order 9 Rule 4 CPC.

[3]. In fact, the perusal of the record would show that the suit was dismissed under Order 9 Rule 8 CPC. A factual mistake was committed by the lower Appellate Court in appreciating the nature of impugned order passed by the trial Court.

[4]. While drafting the present revision petition, the petitioners have not challenged the order dated 22.11.2016 passed by the Addl. District Judge, Panchkula. However, the basic controversy involved in the present revision petition is for restoration of the suit which was dismissed in default on 01.12.2015 for which an application for restoration of the same was filed promptly i.e on the date which was recorded due to inadvertent error.

[5]. After hearing learned counsel for the parties, I deem it appropriate to consider the legality and propriety of the order

dated 22.11.2016 while exercising inherent powers under Article 227 of the Constitution of India. In fact the appeal was maintainable before the Addl. District Judge, Panchkula, but the same was held to be not maintainable by quoting wrong provision of CPC under which the suit was ordered to be dismissed in default.

[6]. On the date of appearance of the plaintiffs, defendants were duly represented and it was the plaintiffs, who did not appear in the Court, therefore, the nature of order dated 01.12.2015 was under Order 9 Rule 8 CPC and, therefore, rejection of the application for restoration of the same would be covered under the ambit of Order 43 Rule 1(c) CPC. Hence, the factual mistake committed by the lower Appellate Court would compel me to treat this revision petition against the order dated 22.11.2016 as well.

[7]. Though the plaintiffs have not assailed the order dated 22.11.2016, in this revision petition and this Court would have relegated the petitioners to approach the lower Appellate Court again but in such eventuality it would cause further delay in disposal of the main *lis*. Therefore, I deem it appropriate to accept the prayer of the petitioners to treat this petition against the order dated 22.11.2016 passed by the Addl. District Judge, Panchkula as well. Prompt filing of application is a ground to

restoration of the suit. I accept this petition, subject to payment of costs of Rs.20,000/- to be paid to defendants No.2 and 4 in equal proportion.

[8]. With the aforesaid observations, this revision petition is disposed of.

August 08, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No