

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 3339 of 2015(O&M)
Date of decision : 23.03.2018

Bhushan Limited and another

..... Petitioner

versus

Jhalani Tools India Ltd. and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Saurabh Garg, Advocate for the petitioners

Mr.Saurabh Arora, Advocate for respondent No.1.

Ms.Raina Sabharwal Thakur, Advocate
for respondent No.2.

AMIT RAWAL, J. (Oral)

The present revision petition is against the orders dated 16.9.2010(Annexure P-3), 20.11.2013 (Annexure P-7) and 8.12.2014 (Annexure P-8).

The petitioner-plaintiff instituted the suit for recovery of Rs. 31 lacs an odd amount on 02.01.2002 which was filed under Order XXXVII Rules I and II of the CPC . The said suit was dismissed in default vide order dated 16.09.2010. An application under Order 9 read with rules 4 and 8 read with section 151 CPC was moved for restoration of the aforesaid suit. The said application was also dismissed vide order dated 20.10.2013. It is in this backdrop of the matter that an application was moved for recalling of the order dated 20.11.2013 which was also dismissed on 8.12.2014.

Mr.Saurabh Garg, learned counsel appearing on behalf of the

petitioner has relied upon the judgment rendered by a Division Bench of this court in **Bhajan Singh v Ganeshi Devi AIR 1978 Punjab and Haryana 257** that the application for restoration of previous restoration in case of dismissal in default would be maintainable.

Per contra, Ms. Raina Sabharwal Thakur, learned counsel appearing on behalf of respondent No.2 submitted that the suit itself was not maintainable in view of the fact that the company is under liquidation as winding up order was passed on 18.03.2003. The remedy lies elsewhere in view of provisions of Section 446 of the erstwhile Companies Act, 1956 and now 279 of the new Act of 2013 and, therefore, this revision petition is liable to be dismissed. Even otherwise no explanation has come forth in not pursuing the matter diligently and sincerely. It was an intentional belated act on behalf of the petitioner in keeping the matter pending in view of the winding up order and urged his Court for dismissal of the petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book.

The law with regard to the maintainability of the application submitted for restoration of the suit is no longer res integra in view of the finding rendered by a Division bench of this Court in para 2 of the judgment in case of Bhajan Singh v. Ganeshi Devi(supra)which is as under:-

“2. The matter in issue is not res integra. In Abdul Rahman Shah v. Shahana, AIR 1920 Lah 304. Petman, J., expressed the opinion that an application under R, 9 of Order IX of Code of Civil Procedure was competent if it sought the restoration of an earlier application seeking restoration of the suit in the event that the suit and the said previous application had both been

dismissed for default. Reliance was placed by Petman, J., on the provisions of Section 141 of the Code. That section stood thus when the impugned order was made:

"The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction."

The provisions of the section are very wide in their amplitude and there is no reason why any restricted meaning should be attached to them in the absence of any indication to that effect in the language employed. An application under Order IX, R. 9 of the Code is certainly a proceeding in a Court of civil jurisdiction and, therefore, the procedure provided in the Code in regard to suits has to be followed in respect thereof. In other words, if an application of that type is dismissed for default, the procedure available to the aggrieved party would be the same as is open to a plaintiff when his suit is dismissed for default. This was also the opinion expressed by a Full Bench in *Natty Parsed v. Singh Kapurchand*, AIR 1976 Madh Pra 136.

We might add that the view that an application is competent for restoration of a previous one dismissed for default when such previous one seeks a restoration of the suit which was itself dismissed for default was also expressed in *Lok Nath v. Mst. Sattan Bai*, AIR 1923 Lah 302(2), [*Ganesh Prasad v. Bhagelu Ram*](#), AIR 1925 All 773, and [*Nand Lal v. Jetha Ram*](#), AIR 1929 Lah 878 none of which, however, refers to the provisions of S. 141 of the Code; while no decision to the contrary has been cited before us."

But, on noticing the aforementioned fact it is clear that not one but three applications were moved for restoration of the original application dismissed in default . In my view the approach of the plaintiff-petitioner

had not been sincere but lackadaisical and tardy. To put the machinery of the court into motion, litigant is required to comply with the requirements of law but one cannot be permitted to pursue as per own whims and fancies.

Be that as it may, I am also not unmindful of the fact that the company is under liquidation but the application under Section 446 of the Act of 1956 would not be maintainable until and unless the suit is ordered to be restored. It is only at that stage that an application for taking over the proceedings in view of the winding up order to proceed the suit can be submitted on behalf of liquidator.

Resultantly all the impugned orders are set aside subject to payment of Rs. 25,000/- as costs to be paid to the respondent No.1.

The revision stands allowed.

**(AMIT RAWAL)
JUDGE**

23.03.2018

sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No