

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

CR No.3443 of 2016

Date of Decision : 06.12.2018.

Gurmail Singh

...Petitioner

Versus

Gurmej Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Vinod K. Kaushal, Advocate for the petitioner.

Mr. Vishal Thakur, Advocate for

Mr. Keshav Pratap Singh, Advocate respondent No.2.

B.S.WALIA, J. (Oral)

1. Revision petition has been filed under Article 227 of the Constitution of India praying for setting aside of order dated 12.04.2016 (Annexure P-1), passed by the learned Addl. Civil Judge (Senior Division), Balachaur, SBS Nagar, dismissing the application filed by the petitioner-plaintiff for restoration of the suit dismissed in default vide order dated 25.04.2013.

2. A perusal of the impugned order reveals that the prayer for restoration of the suit dismissed in default was declined on the ground that neither the counsel for the petitioner-plaintiff had disclosed the Court in which he was allegedly busy due to which he could not appear in Court on the day the suit was dismissed in default nor the petitioner-plaintiff had disclosed the name of the relative who had died and due to which he could not appear in the Court besides the application had been moved after delay.

3. Learned counsel for the respondents contended that the impugned order dismissing the application for restoration of the suit dismissed in default was in accordance with law and did not warrant interference.

4. Brief facts of the case leading to the filing of the revision petition are that the petitioner-plaintiff had filed a suit for possession of residential house measuring 1 kanal comprised in khewat No.66/54, khatoni No.72, Khasra No.31//7/1/4 (1-0) bounded as East: House of Gurcharan Singh etc., West: House of Sodhi Ram, North : C.C. Street and South : Tehsil Complex, Balachaur situated within abadi area of Ward No.12, Balachaur, Tehsil Balachaur, District S.B.S. Nagar, being self purchased property of the petitioner-plaintiff, by evicting the respondents and their family members from the said residential house. Prayer was also made for permanent injunction for restraining the respondents-defendants or their agents from further constructing or changing the nature of the said residential house.

5. It has been brought to the notice of this Court that during the pendency of the revision petition, the petitioner has died and that the petitioner's wife, two daughters and one son have been impleaded as his LR's. In the circumstances prayer is for setting aside of the impugned order on the ground that the petitioner did not stand to gain anything by not appearing in the Court when the suit was dismissed in default nor would it have been of any use to the petitioner to have delayed the conclusion of the suit. Although a perusal of the impugned order reveals that neither the counsel for the petitioner nor the petitioner himself (now deceased),

mentioned the case in which the petitioner's counsel had gone to another Court nor the petitioner mentioned the name of the relative on account of whose death he could not put in appearance, yet, I am of the view that ends of justice would be met and the majesty of law upheld, if the impugned order dismissing the suit in default is set aside subject to payment of costs and suit is restored for decision on merits.

6. At this stage, learned counsel for the respondents states that exemplary costs be imposed for setting aside the impugned order.

7. I have considered the plea of learned counsel for the respondents and am of the view that in the circumstances, ends of justice would be met, if the impugned order is set aside subject to payment of costs of ₹20,000/- by the petitioner to the respondents. Accordingly, the impugned order is set aside and suit titled 'Gurmail Singh vs. Gurmej Singh and another' is restored to its original number. The parties through counsel are directed to put in appearance before the learned trial Court on 07.01.2019. It is, however, made clear that setting aside of the impugned order and restoration of the suit to its original number for further proceedings in accordance with law is subject to the petitioner paying costs of ₹20,000/- to the respondents.

(B.S.WALIA)
JUDGE

06.12.2018

rajesh.k.khurana

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No