

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

CR-346-2017 (O&M)

Date of decision : 22.3.2018

Ashwani Kumar

..... Petitioner

Versus

Ram Parshad and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.S. Swaich, Advocate for the petitioner.

Mr. Jasdeep Singh, Advocate for respondents No. 1 and 2.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 26.9.2016 (Annexure P-8), passed by learned Additional District Judge, SAS, Nagar, Mohali vide which an appeal against the order dated 17.7.2014 (Annexure P-6) passed by learned Civil Judge (Senior Division), SAS Nagar, Mohali dismissing in default the application filed for restoration of the suit, was dismissed.

Heard.

It comes out that a civil suit for declaration was pending on behalf of the petitioner-plaintiffs claiming that they are the owners to the extent of 1/4th share each in the suit land. The possession as well as permanent injunction of the suit land was sought.

It comes out that when the case was at the stage of evidence on 20.7.2012, neither the counsel for the plaintiffs nor the plaintiffs appeared and suit was dismissed in default.

It comes out that on that date, evidence was to be produced subject to payment of cost of Rs. 1100/-. Plaintiffs claim that on 29.7.2012 they were informed by their counsel that suit has been dismissed, therefore, plaintiffs filed an application on 21.8.2012 for restoration of the suit claiming that it is within the limitation. The plea raised by the plaintiffs was that counsel was busy and later on 29.7.2012, they came to know about the dismissal of the suit in default. The same was negated by both the Courts below.

I am of the view that the Court is to do justice. In this case, there is only one day delay in filing the application. Even otherwise, on 20.7.2012, neither the counsel for the plaintiffs nor the plaintiffs were present, therefore, it is presumed that they might have come to know about dismissal of the suit on a subsequent date. If it is so, the application comes within the limitation.

The controversy in the present suit needs to be decided on merits. Unluckily, learned trial Court proceeded to frame the issues and call for the evidence of both the parties and then after a trial for about two years, decided the matter. Whereas I am of the view that it should have been decided summarily.

Consequently, both the impugned orders dated 17.7.2014 (Annexure P-6) passed by learned Civil Judge, (Senior Division), SAS Nagar, Mohali and the order dated 26.9.2016 (Annexure P-8), passed by learned Additional District Judge, SAS Nagar, Mohali are set aside.

The suit filed by the plaintiffs is resorted, subject to payment of cost of Rs. 5,000/- which will be resumed from the same stage at which it was pending. The cost of Rs. 1100/- shall be paid on the first date of hearing in addition to the cost imposed by this Court.

In view of above, present petition is allowed with above direction.

Since, the main petition has been allowed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

22.3.2018

preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No