

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.350 of 2018

Date of Decision: 01.02.2018

Tejinder Singh & ors.

... Petitioners

Versus

Darshan Lal & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Anupam Bhardwaj, Advocate,
for the petitioners.

RAMENDRA JAIN, J.(Oral)

Through the instant revision petition filed under Article 227 of the Constitution of India, challenge has been laid to the order dated 06.09.2017 (Annexure P-5) of the trial Court dismissing the application of the petitioners-plaintiff for restoration of their application for restoration of suit.

In nutshell, the petitioners-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 29.05.2017 against the respondents-defendant, which was dismissed in default on 13.02.2012, but was restored vide order dated 05.08.2013 (Annexure P-1), subject to payment of costs of Rs.1,000/-, to be paid to free legal aid. However, the petitioners did not comply with the said order. Therefore, their application for restoration of the suit was dismissed on 09.09.2013 and the order dated 5.8.2013 was recalled. Resultantly, the suit of the petitioners automatically stood dismissed.

Thereafter, the petitioners moved an application for restoration of their application dismissed in default on 09.09.2013 submitting that the petitioner No.2 namely Karamjit Singh was not keeping good health and as such, he could not deposit the costs. Non-compliance of the aforesaid order was not intentional or deliberate, but was on account of his ill health. Along

with the application, medical record (Anenxure P-4) colly of petitioner No.2 was also annexed. However, the trial Court dismissed the said application vide impugned order dated 06.09.2017.

Heard.

Since the subject matter of the suit property is ₹58,21,000/- upon which Court fees of ₹1,35,336/- has been affixed by the petitioners in their suit, therefore, it will be very harsh to non-suit the petitioners for technical reasons, in view of settled proposition of law that no one should be condemned unheard.

Considering over all facts and circumstances, this petition is allowed and the impugned order dated 06.09.2017 is set aside. The trial court is directed to restore the suit of the petitioners, subject to payment of costs of ₹30,000/-, 50% of which shall be deposited with the Member Secretary, District Legal Services Authority, Amritsar and the remaining shall be paid to the respondents.

A copy of this order be sent to the Member Secretary, District Legal Services Authority, Amritsar, to recover the costs.

This petition is disposed of without issuing notice to the respondents with a view to impart justice to the parties and to save the huge expenses which may be incurred by the respondents and also to avoid unnecessary delay in the adjudication of the matter. Still, if dissatisfied, the respondents may move this Court for recalling this order within six weeks from today.

25.01.2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No