

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

C.R.No.4196 of 2016

Payal

....Petitioner

Versus

Ganesh Dass Chhabra
(deceased through LRs)

....Respondent

Date of Order: 12.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Harmanpreet Kaur, Advocate for the petitioner.

AMIT RAWAL, J (ORAL)

Petitioner-plaintiff is aggrieved of the impugned order dated 31.3.2016 passed by learned Addl. District Judge, Hisar whereby her application for setting aside the order dated 28.11.2011 dismissing the appeal filed by her has been dismissed.

The plaintiff instituted a suit for possession of the suit property, which was dismissed vide judgment and decree dated 25.3.2011 passed by learned Civil Judge (Sr. Division), Hisar. An appeal was preferred against the same, which was dismissed in default on 28.11.2011. Thereafter, application under Order 41 Rule 19 CPC was submitted on 16.1.2012 for setting aside order dated 28.11.2011, which was dismissed being barred by limitation. Lower Appellate Court had taken four years in deciding the application instead of laying focus on the adjudication of the appeal itself.

Learned counsel for the petitioner submitted that the lower Appellate Court has mis-appreciated the facts on record while dismissing the application for restoration. She submitted that non-appearance of the appellant or her counsel was not intentional but due to misunderstanding.

The contesting respondents in this case are the LRs of

respondent No.1 only whereas respondent Nos.3,5,6(ii) & 7 had been served and there was no representation on their behalf whereas respondent No.6(i) has since died. No LRs of respondent No.2 & 6(i) have been brought on record.

After hearing learned counsel for the petitioner and appraising the paper book, in my view the plaintiff-petitioner was not diligent in pursuing the appeal and had put the entire blame on her counsel. The relationship between the client and lawyer is highly fiduciary in nature and demands utmost fidelity and good faith. An Advocate learns from his client the weak points of the action as well as the strong ones, therefore such kind of statement cannot be relied. Be that as it may, I am of the view that in order to enable the parties to have fair trial with a view to do substantial justice, the lower Appellate Court ought to have adopted pragmatic approach in hearing the appeal on merits instead of passing the impugned order.

Consequently, keeping in view the circumstances of the present case and taking into account the undertaking of the petitioner that she shall bring on record the LRs of the respondents at appropriate stage, the present petition is allowed and the impugned orders dated 31.3.2016 as well as dated 28.11.2011 passed by learned Addl. District Judge, Hisar are set aside subject to payment of Rs.5000/- as costs to be paid to the respondent-defendant. Appeal is accordingly restored to its original number.

March 12, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No