

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

**CR No.4528 of 2016 (O&M)
Date of Decision : 21.05.2018**

Sat Bhushan

.....Petitioner

Versus

Lachman Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Sanjiv Gupta, Advocate for the petitioner.
Mr. Nihul Pratap Singh, Advocate for the respondents.

ARUN PALLI, J. (Oral)

The petitioner/plaintiff is in revision against the order dated 5.12.2013 (Annexure P-4), passed by the Additional Civil Judge (Sr. Divn.), Ferozepur Jhirka, vide which, his application seeking restoration of his suit, that was dismissed in default, had since been declined. As also the judgment dated 24.02.2016, vide which, even the appeal against the said order had since been dismissed by the appellate Court. Parties to the lis, hereinafter, shall be referred to by their original position in the suit.

Before I proceed further, it indeed would be apposite to refer to the conclusion recorded by the appellate Court, which reads thus:-

“Perusal of the record of the learned trial Court reveals that the suit of the plaintiff was dismissed in default earlier on 8.9.2008. The plaintiff filed an application for restoration of his suit on 6.10.2008, which was allowed by learned trial Court vide order dated

6.12.2008, subject to payment of Rs.1,000/- which was to be deposited in legal aid fund and the case was adjourned to 10.12.2008 for payment of costs as well as for evidence of the plaintiff. On 10.12.2008, neither the cost was paid nor any evidence was led by the plaintiff and on the request of learned counsel for the plaintiff the case was adjourned to 17.12.2008 for evidence of the plaintiff as well as for payment of costs. But on 17.12.2008, neither the aforesaid cost of Rs.1,000/- was paid/deposited nor anybody appeared on behalf of the plaintiff and therefore, the suit of the plaintiff was dismissed in default by learned trial Court vide order dated 17.12.2008. The plaintiff filed an application for restoration of his suit again on 14.1.2009, which was dismissed by learned trial Court vide order under challenged dated 5.12.2013.

As mentioned above, the suit of the plaintiff was dismissed in default on two occasions due to non-appearance of the plaintiff or his counsel by learned trial Court vide orders dated 8.9.2008 & 17.12.2008. On 17.12.2008, the plaintiff was required to appear in person or through his counsel and to deposit the costs of Rs.1,000/-, as mentioned above, but neither the cost was deposited nor anybody appeared on behalf of the plaintiff. No plausible explanation has been given by the plaintiff for non-

depositing of costs of Rs.1,000/- or for non-appearance of the plaintiff or his counsel on 17.12.2008. In the application dated 14.01.2009, for restoration of suit, it has been simply mentioned that the counsel for the plaintiff was busy in some other court and he could not appear in this case when the case was called. The said plea raised by the plaintiff in his application dated 14.1.2009, cannot be treated as a plausible ground for non-appearance of the plaintiff or his counsel in the Court on 17.12.2008. As per order dated 17.12.2008, the suit of the plaintiff was dismissed in default at 2.10 p.m. and prior to that the case had been called several times. Therefore, this Court is of the view that learned trial Court has rightly dismissed the second application filed by the applicant-plaintiff for restoration of suit, which was dismissed in default on 17.12.2008”.

Ex facie, the petitioner has been extremely remiss and negligent in pursuing his cause. Even earlier the suit filed by the petitioner was dismissed for non-prosecution on 8.9.2008, but was restored subject to payment of Rs.1,000/- as cost. The matter was adjourned for 10.12.2008, for recording the plaintiff's evidence and payment of cost. However, on the adjourned date neither the cost were paid nor any evidence was led by the plaintiff. Still on the request of the counsel for the plaintiff the matter was adjourned to 17.12.2008. But, again, neither the cost were paid nor anyone

caused appearance on behalf of the plaintiff to pursue the suit. Therefore, the Court was choice-less but to dismiss the suit for non-prosecution. Thus, this Court is dissuaded to interfere with the impugned orders, particularly, for nearly 10 years have passed since the suit was dismissed. No ground is made out to interfere in exercise of revisional jurisdiction under Article 227 of the Constitution of India. The petition is accordingly, dismissed.

21.05.2018

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No