

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

C.R.No.4232 of 2017

Charan Singh and Anr.

...Petitioners

Versus

Gurgaon Gramin Bank and Ors.

....Respondents

Date of Order: 13.12.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sachin Mittal, Advocate for
Mr. S.K. Bawa, Advocate for the petitioners.

Mr. Pavan Malik, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

Present revision petition is directed against order dated 04.5.2017 whereby the application for restoration of execution application dismissed for want of prosecution and also for setting aside order dated 04.10.2016 of the learned Addl. District Judge, Mewat whereby appeal challenging the orders dated 05.1.2016 and 07.9.2015 has been dismissed.

Learned counsel for the petitioners submitted that the petitioners filed an appeal against the orders dated 07.9.2015 and 05.1.2016, which was dismissed in default on 04.10.2016 and an application for restoration was submitted on 27.2.2017, which was also dismissed on account of delay. It is submitted that the counsel representing the petitioners did not inform of the outcome of the appeal and on acquiring knowledge of the same, the appeal was filed.

Per contra, learned counsel for the respondent opposed the revision petition by saying that the petitioner was not diligent in pursuing

the proceedings and owing to non-ascertainment of the fate of the appeal, thus cannot be permitted to fasten the liability on their lawyer.

I have heard learned counsel for the parties and appraised the paper book.

Before I could dictate the order, learned counsel for the petitioners has informed the Court that in order to show their bonafide, a sum of Rs.5 (five) lacs had been deposited with the Registry of this Court. No doubt, the petitioners/judgment debtors have not only been diligent but lackadaisical in not moving the application within the reasonable time by putting blame on the lawyer whereas the petitioners are equally responsible to ascertain of pendency of the appeal and the entire fault cannot be attributed to the counsel. Still, the courts below, in the opinion of this Court, ought not have dismissed the application on such grounds and laid focus on decision of the appeal on merits.

In order to prevent failure and miscarriage of justice, I deem it appropriate to allow this petition on payment of adequate costs.

Accordingly, present revision petition is accepted and impugned orders dated 04.10.2016 as also 04.5.2017 passed by learned Addl. District Judge, Mewat are set aside subject to payment of Rs.10,000/- as costs to be paid to the respondent. The appeal shall stand restored to its original number. It is directed that a sum of Rs.5 (five) lacs deposited by the petitioners shall be refunded to them back. The petitioners, however, shall be at liberty to seek interim stay in the pending appeal.

December 13, 2018
manoj

(AMIT RAWAL)
JUDGE

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