

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.42 of 2018

Date of Decision: November 28, 2018

Vikas Jain

...Petitioner

Versus

The Municipal Committee, Rohtak & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr. C.B.Goel, Advocate,
for the petitioner.

Mr. S.K.Mahajan, Advocate,
for respondent No.1-Municipal Committee.

Mr. Deepak Girotra, Advocate,
for respondent Nos. 4 to 8.

AMIT RAWAL, J.

Mr. S.K.Mahajan Advocate has put in appearance on behalf of respondent No.1, whereas Mr.Deepak Girotra Advocate has put in appearance on behalf of respondent Nos.4 to 8.

The present revision is directed against the order dated 27.05.2013 passed by the Additional Civil Judge (Senior Division) and order dated 04.10.2017 rendered by the Additional District Judge, Rohtak, whereby the application for restoration of the suit and the appeal thereto have been dismissed.

Mr. C.B.Goel, learned counsel representing the petitioner submitted that the petitioner had filed a suit for declaration with consequential relief of mandatory injunction being grand-son of late Lala

Anup Singh Jain, who was the owner in possession of the suit land as the

land was purchased by him vide sale deed dated 25.07.1955 registered on 04.08.1955.

Defendant No.1, after having been served, filed written statement on 03.08.2001, whereas defendants No.2 and 4 to 9 filed their separate written statement. Issues were framed on 22.04.2005 and the case was listed for plaintiff's evidence on 06.09.2005. On 08.06.2006, the case which was listed for evidence of the plaintiff at own responsibility, was dismissed in default under Order 9 Rule 8 CPC on account of non-appearance of the plaintiff. An application for restoration of the suit was filed immediately on the next day and the same was allowed vide order dated 30.03.2007 subject to payment of ₹ 1,000/- as costs. The case was adjourned to 24.07.2007 for recording the statements of plaintiff's witnesses. Unfortunately, on 24.07.2007, the suit again was dismissed in default. An application for restoration of the suit was filed on 06.08.2007 (Annexure P-1), but the same has been dismissed by the trial court and affirmed by the Lower Appellate Court. The absence of the counsel was neither intentional nor willful. However, there was some confusion about deposit of the costs owing to two sets of defendants. The litigants should not be made to suffer on account of the fault of the counsel. In support of the aforementioned submission, relied upon the judgment of Hon'ble the Supreme Court in **Rafiz and another Versus Munshi Lal and another,** AIR 1981 SC 1400.

On the other hand, Mr. S.K.Mahajan, learned counsel representing respondent No.1 and Mr. Deepak Girotra, learned counsel appearing on behalf of respondent Nos.4 to 8 supported the orders under challenge and contended that it was an intentional act on behalf of the

plaintiff for not appearing. Fault cannot be attributed to the counsel as the clients have to be also vigilant. Sole motive of the plaintiff is to keep the suit pending by building pressure upon the defendants and, thus, urged this court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Goel. The facts aforementioned have not been controverted by both the counsel representing the parties to the lis. No doubt, the petitioner-plaintiff's Advocate had not been vigilant in leading evidence on 08.06.2006 when the suit was dismissed in default, but the application for restoration was filed on the next day and the suit was ordered to be restored on 30.07.2007, but owing to the non-payment of the costs, was again dismissed in default on 24.07.2007. The rules of law are handmade of justice and should not have come in the way, particularly when other party can be compensated in terms of costs.

Accordingly, the impugned orders are set-aside subject to payment of ₹ 20,000/- as costs . Revision petition stands allowed.

It is made clear that plaintiff shall make an endeavour to complete the evidence as early as possible and shall not delay the trial of the suit and in case the aforementioned fact is revealed from the conduct, the trial court shall be at liberty to pass appropriate orders in accordance with law.

November 28, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No