

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5185 of 2015 (O&M)

Date of decision:23.01.2018

Chhano Devi

... Petitioner

Vs.

Arun Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikrant Rana, Advocate
for the petitioner.

Mr. Salil Bali, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order dated 03.04.2015 (Annexure P-1), whereby, the application seeking restoration of the suit, has been dismissed.

Mr. Vikrant Rana, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the suit for specific performance was filed which dismissed in default on 09.09.2011 when the case was fixed for arguments on the application for amendment of the plaint. The application was moved on 23.09.2011 for restoration of the case within a statutory period of 30 days and notice of the same was issued to the respondent-defendants for 20.10.2011 but on that day, the application was not traceable and the same remained untraced. Thereafter, another application was moved

on 28.01.2012 which has been dismissed being barred by law of limitation, vide impugned order dated 03.04.2015 (Annexure P-1). He further submitted that other party had not been able to controvert the previous application and notice of the same and without adverting to the same, the trial Court has dismissed the application for restoration. No harm and prejudice would be caused to the respondent-defendants, in case the suit was allowed to be restored to its original number, subject to payment of costs which this Court deems it appropriate.

Mr. Salil Bali, learned counsel appearing on behalf of the respondent-defendants submitted that there is no illegality and perversity in the order under challenge. No order has been placed on record to show that the Court had taken cognizance of the previous application which has been misplaced. The application has been moved with malafide intention.

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

The application was filed within 30 days from the date of dismissal of suit in default. Rejection of the application seeking restoration of the suit vide impugned order, in my view, has rendered miscarriage of justice. The Courts are required to advance justice instead of passing the order which results into miscarriage of justice, as noticed above and the parties should not suffer for the lapse of counsel, in view of the law laid down by the Hon'ble Supreme Court in **AIR 1981 SC 1400 Rafiz and another vs. Munshi Lal and another.** The impugned order, in my view

suffers from illegality and perversity, much less has been passed without jurisdiction.

Keeping in view the aforementioned observations, the impugned order dated 03.04.2015 dismissing the application seeking restoration of the suit, is hereby set aside and the suit is restored to its original number.

Accordingly, the revision petition is allowed, subject to payment of costs of ₹10,000/- which shall be a condition precedent.

(AMIT RAWAL)
JUDGE

January 23, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No