

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

CR-5717-2017

Date of Decision: 16.11.2018

Bhupinder Singh

.... Petitioner

Versus

Balbir Singh and another

... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present:- Mr.Naresh Kaushal, Advocate
for the petitioner.

Mr. Arvind Kashyap, Advocate
for the respondents.

AVNEESH JHINGAN, J. (Oral)

The instant civil revision petition has been filed under Article 227 of the Constitution of India seeking quashing of orders dated 03.07.2017 passed by Additional Civil Judge (Sr. Divn.), Fatehgarh Sahib, dismissing the application for restoration of the suit and order dated 10.01.2014 whereby suit was dismissed in default.

The petitioner/plaintiff filed a suit for specific performance and permanent injunction. He was 75 years of age. Because of his bad health, he appointed his son as his General Power of Attorney (for brevity, 'attorney') to look after the legal proceedings. The petitioner/plaintiff had submitted his affidavit in evidence and case was fixed for cross-examination of the attorney of the petitioner/plaintiff. On 10.01.2014, the attorney had gone out of station for some urgent work. Learned counsel for the petitioner/plaintiff was busy in other Court and was not able to appear,

when the case was called. The suit was dismissed for non-prosecution on 10.01.2014.

An application for restoration of the suit was filed on 22.02.2014. The said application was dismissed vide order dated 03.07.2017. The dismissal of the application by the Additional Civil Judge (Sr. Divn.) was swayed by the fact that the petitioner/plaintiff was trying to wriggle out from the direction of the Court for leading evidence subject to the last opportunity.

Heard learned counsel for the parties.

Learned for the petitioner/plaintiff argued that the petitioner/plaintiff is an old man, as a result of his ill-health and age, he was not able to appear in Court on every date, hence, he appointed his son as his attorney. On the said date, his son was out of station and could not appear. The dismissal of suit for non-prosecution was uncalled in the circumstances of the case. He submitted that there is no intention of the petitioner/plaintiff to delay the proceeding, he undertakes that the petitioner/plaintiff shall complete his evidence within two months from today.

Learned counsel for the non-applicant opposed the petition and argued that the proceedings were intentionally being delayed. The agreement to sell was of the year 2005 and the petitioner/plaintiff is trying each and every tactic to delay the suit proceedings.

The suit was dismissed for non-prosecution on 10th January, 2014. The application was instituted within a reasonable time. In the interest of justice, it would not be appropriate to dismiss the suit for non-prosecution instead of same being decided on merits. In view of the undertaking given by the petitioner/plaintiff today before this Court that the

evidence on behalf of the petitioner/plaintiff will be concluded within two months from today, the orders dated 10.01.2014 and 03.07.2017 are set aside. The suit is restored to its original number subject to petitioner/plaintiff paying cost of ₹20,000/- to defendant No.1.

Parties are directed to appear before the trial Court on 06.12.2018.

Petition is disposed of accordingly.

16.11.2018
anju

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No