

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

Civil Revision No.578-2018
Date of Decision : 09.07.2018

M/s Jai Ganesh Oil Carriers through its proprietor. ...Petitioner

Versus

United India Insurance Company Ltd. and another. ...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present :- Mr. Vivek Salathia, Advocate
for the petitioner.

B.S. Walia, J (Oral)

1. Challenge in this revision petition under Article 227 of the Constitution of India is to order dated 13.11.2017, Annexure P-1, whereby application Annexure P-2 filed for restoration of Civil Appeal No.37/882 of 2015 titled as M/s Jai Ganesh Oil Carriers versus United India Insurance Company Private Limited and another was dismissed. Prayer is also for setting aside order dated 31.03.2016 (Annexure P-3), whereby appeal titled as M/s Jai Ganesh Oil Carriers versus United India Insurance Company Private Limited and another was dismissed in default by the learned Additional District Judge, Amritsar.

2. A perusal of order (Annexure P-3) dated 31.03.2016 reveals that on finding that none had appeared despite the case having been called out for hearing several times since morning, the appeal was dismissed in default at 4.00 p.m. Application for restoration of the appeal dismissed in default was moved on 15.05.2017 on the ground that counsel conducting the appeal had

informed the petitioner that he need not appear in the appeal on each and every date of hearing and that he would inform the petitioner as and when his presence was required.

3. In the aforementioned background, it was contended that in the light of the assurance held out to him, the petitioner did not contact his counsel and it was only on 20.04.2017 when the petitioner contacted the counsel that he learnt that the appeal had been dismissed in default on 31.03.2016. In the circumstances, application was moved contending that on account of lapse of the counsel, a party should not suffer. Further, the stand of the petitioner in the application for restoration was that on the very next day i.e. on 21.04.2017, the petitioner applied for certified copy of order dated 31.03.2016 and after obtaining a copy of the same on 04.05.2017 moved the application for setting aside order dismissing the appeal in default.

4. The learned lower Appellate Court while taking note of the dismissal of the appeal on 31.03.2016 and application for restoration having been filed on 15.05.2017 as also the fact that as per the version of the petitioner himself, he had not approached his counsel for more than one year from the date of dismissal of the appeal in default, held that no reasonable explanation had been given by the appellant for restoration of the appeal. The learned lower appellate court held that the petitioner was negligent in pursuing the appeal and in view of the long delay in filing the application, the learned lower appellate court declined to restore the appeal dismissed in default.

5. Learned counsel contended that the petitioner could not be penalized on account of the inaction of the petitioners counsel to inform the petitioner of the date of hearing. I have considered the submissions of learned counsel

for the petitioner and having gone over the impugned order, I am of the considered view that the same does not warrant any interference. Admittedly the appeal was dismissed in default on 31.03.2016. Even if it be presumed that the counsel had held out that the appellant/petitioner was not required to appear in the case on each and every date of hearing but the inaction on the part of the petitioner in not approaching the counsel who was conducting the appeal for close to 13 months exhibits absence of due diligence. Apparently, the petitioner slept over the matter for close to 15 months.

6. Accordingly, on account of failure to exercise due diligence as also resultant delay of more than 15 months in filing an application for restoration disentitles the petitioner to seek restoration of the appeal dismissed in default.

7. Accordingly, finding no infirmity in the impugned order, the revision petition is dismissed in limine.

(B.S. Walia)
JUDGE

09.07.2018
Manpreet

Whether reasoned/speaking	Yes
Whether reportable	No