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

CR No. 5784 of 2018

Date of Decision: 30.11.2018

Naranjan Dass

-Petitioner

Vs

Parveen and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Nagra, Advocate,
for the petitioner.

Ms. Amarjit Kaur, Advocate,
for respondents No.1 to 4.

Mr. Parambir Singh, Advocate,
for respondent No.5.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has challenged the orders dated 15.09.2017 and 31.07.2018 passed by Additional Civil Judge (Senior Division), Phagwara vide which suit of the plaintiff was dismissed in default and he was proceeded against exparte in the counter claim filed by defendant No.1. The application filed by the petitioner for restoration of the suit was dismissed, however, he was allowed to join proceedings of counter claim.

Perusal of the record would show that the suit was dismissed in default on 15.09.2017 when the evidence of the

plaintiff was fixed for that date with last opportunity. None appeared on behalf of the plaintiff and the suit was dismissed in default. In the absence of the plaintiff in the counter claim set up by defendant No.1, he was proceeded against exparte in the counter claim. The case was adjourned for exparte evidence of the counter claimants.

An application was filed for obtaining certified copy of order dated 15.09.2017 on 19.09.2017 which was ultimately prepared on 27.09.2017 and supplied to the plaintiff on 03.10.2017. The present application for restoration of the suit came to be filed on 03.11.2017.

The trial Court while dismissing the application for restoration of the suit has observed that in terms of Article 122 of the Limitation Act, limitation of 30 days is prescribed from the date of passing of the order and not from the date of acquiring knowledge or receipt of certified copy of order.

If delay is counted from the date of passing of order i.e. 15.09.2017, filing of application on 03.11.2017 would be barred by about 10 days.

In view of ratio of **Bhagmal and others vs Kanwar Lal and others, (2010-4) PLR 267** and **Rattan Chand vs State of Punjab and others, 2007(1) HRR 116**, the sufficient cause in not filing the application for restoration of a suit if emanates from

the application for restoration itself, then there is no need to file separate application for condonation of delay.

Perusal of the record would show that the application for obtaining certified copy of order was filed on 19.09.2017 and the same was made available to the plaintiff on 03.10.2017. The delay in filing that application is not such which would prevent the plaintiff to claim restoration of the suit, however in order to ward off any instinct of malafide or inaction for leading evidence on the date fixed, plaintiff can be burdened with costs of Rs.15,000/- to be paid to the respondents in equal proportions.

Resultantly, this revision petition is allowed in the aforesaid terms.

Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

30.11.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No