

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 229

Case No. : C. R. No. 6460 of 2016

Date of Decision : November 14, 2018

Rachhpal Singh
(since deceased) through LRs Petitioners
vs.
Punjab Urban Development Authority Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Ms. Madhu Dayal, Advocate
for the petitioners.

Ms. Geeta Sharma, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 29.05.2013 passed by Additional Civil Judge (Senior Division), Ludhiana (for short – the trial court), through which the application filed by the petitioners for restoration of the suit filed by Rachhpal Singh, husband of petitioner (a) and father of petitioners (b) and (c) was dismissed. Also under challenge is the order dated 10.08.2016 passed by the Additional District Judge, Ludhiana (for short – the Appellate Court), dismissing the appeal filed by the petitioners against the aforesaid order of the trial court.

The facts in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 2000, plaintiff –

directing the respondent to remove the boundary wall/grills/barbed wire/fencing etc. from the land detailed and described in his plaint (for short – the suit property). It was further prayed that the respondent be directed to hand over vacant possession of the suit property to the plaintiff. Permanent injunction to restrain the respondent from making any structure over the suit property was also sought.

On being put to notice, the respondent appeared before the trial court and filed its written statement, to which the plaintiff – Rachhpal Singh filed his replication. Thereafter, the matter was adjourned for at least 19 times, on which dates counsel for the petitioner dutifully appeared before the trial court. However, on 23.07.2003, for non-appearance of the counsel for the plaintiff, the aforesaid suit was dismissed in default. Since plaintiff – Rachhpal Singh had died on 23.02.2001, on coming to know of the dismissal of the suit, on 28.11.2003, an application was preferred by the petitioners, who are the LRs of Rachhpal Singh, seeking restoration of suit, which through order dated 29.05.2013, was dismissed by the trial court. Such dismissal was challenged by the petitioners before the Appellate Court, which was also dismissed. It is in these circumstances that the present petition has been preferred before this Court.

Learned counsel for the parties have been heard.

It is not disputed that in the plaintiff's suit, on all the dates prior to the date when his suit was dismissed in default, his counsel had put in appearance and that just after about 3 months beyond the prescribed period of limitation of 30 days, an application was filed by the petitioners seeking restoration of their suit. The delay of about 90 days in the filing of the

application was explained on the ground that the plaintiff Rachhpal Singh as also his LRs were permanent residents of United Kingdom (UK) and that the original plaintiff Rachhpal Singh died on 23.02.2001. Due to the afore facts, it took the petitioners sometime to gain knowledge of the dismissal of their suit in default and also to communicate with and send a special Power of Attorney to their Power of Attorney holder, who was residing in India and was pursuing the litigation on their behalf.

In view of the above facts, which are peculiar to this case and for the reason that the bona fides on the part of the LRs of the plaintiff are not even questioned by the respondent, as also for the reason that all that the petitioners are seeking is a decision of their suit on merits which was being rigorously pursued on their behalf on all dates prior to the date on which it was dismissed in default, in the interest of justice, the impugned orders are set aside and the trial court is directed to try the petitioners' suit from the stage it was dismissed in default in accordance with law.

The petition is allowed in the above terms.

Since the suit was filed in the year 2000, the trial court is requested to dispose of the petitioner's suit expeditiously.

(DEEPAK SIBAL)
JUDGE

November 14, 2018
monika

Whether speaking/reasoned ?	Yes.
Whether reportable ?	No.