

CR No.639 of 2018

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

CR No.639 of 2018

Date of decision:01.02.2018

Surinder Kumar Sharma

... Petitioner

Vs.

Kuldip Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Satbir Rathore, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order dated 22.05.2017 (Annexure P-4), whereby, the application seeking restoration of the suit, has been dismissed being barred by law of limitation as prescribed under Article 122 of the Limitation Act.

Learned counsel for the petitioner submitted that petitioner/plaintiff no.1 is a heart patient and was suffering from heart diseases. He remained admitted in the hospital from 11.12.2012 to 21.12.2012 and was undergone open heart surgery. Due to his ill health, he could not contact his counsel to know the fate of his case. The other plaintiffs were his sisters, who had given the GPA to the petitioner/plaintiff No.1. The suit for joint possession of the suit property was filed which was dismissed in default when listed for plaintiffs' evidence. He further submitted that the respondent-defendants were also proceeded against ex

parte before the Court below. Even notice of the aforesaid application was not issued and thus, urged this Court for setting aside the order under challenge.

I have heard the learned counsel for the petitioner-plaintiff No.1, appraised the paper book and of the view that though the limitation for filing the application seeking restoration of the suit dismissed in default prescribed under Article 122 of the Limitation Act is 30 days from the date of the order. The application is accompanied by medical certificate which had been noticed by the Court below but explanation of other 11 months was not found to be satisfactory by the trial Court. In this regard, Mr. Satbir Rathore, has taken the aid of the law laid down by the Hon'ble Supreme Court in **AIR 1981 SC 1400 Rafiz and another Vs. Munshi Lal and another** to contend that the parties should not suffer for the lapse of counsel.

No doubt, approach of the petitioner/plaintiff No.1 holding the GPA of other plaintiffs, had been callous and lackadaisical in pursuing the matter but 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.

Keeping in view the aforementioned observations, the impugned order dated 22.05.2017 dismissing the application seeking restoration of the suit, is hereby set aside with a rider that petitioner/plaintiff

No.1 shall conclude the entire evidence within three opportunities in accordance with law and the suit is restored to its original number.

Accordingly, the revision petition is allowed, subject to payment of costs of ₹5,000/- to be deposited in the Bar Association of Punjab and Haryana High Court, Chandigarh.

(AMIT RAWAL)
JUDGE

February 01, 2018
savita

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