

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7424 of 2015
Date of Decision: May 17, 2018

S.K.Anand

...Petitioner

Versus

The Chief Administrator, Haryana Urban Development Authority,
Panchkula & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Baldev Singh Badhran, Advocate,
for the petitioner.

Mr.Daman Dhir, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

Present revision petition is directed against the orders dated 23.10.2013 (Annexure P-2) and 4.3.2015 (Annexure P-1), whereby the application for restoration of the suit titled as “S.K.Anand Versus The Chief Administrator, Haryana Urban Development Authority, Panchkula” bearing No.199 of 2001 was dismissed in default and the appeal laid before the Lower Appellate Court had also been dismissed.

Mr.Baldev Singh, learned counsel representing the petitioner submitted that the petitioner-plaintiff instituted the suit bearing No.199 of 2001 for declaration with consequential relief of permanent injunction on the premise that he was allotted a Booth No.54-P, Sector 15A, Faridabad by the defendants for a total sale consideration of ₹2,12,000/- vide allotment letter dated 24.10.1998. The petitioner-plaintiff deposited a sum of

₹21,200/- on 14.9.1988 at the time of fall of hammer and ₹31,800/- was deposited on 22.11.1988 and balance amount of ₹1,59,000/- was to be deposited in lump-sum without interest within 60 days. The possession of the plot was to be offered immediately after payment of 15%, but there were no civic amenities, therefore, cause of action arose for not charging the interest @ 18%. When the case was slated for plaintiff's evidence, it was dismissed in default on 31.5.2007. On acquiring the knowledge in July, 2008, an application bearing No.14 dated 6.8.2008 was submitted, but the trial Court, after framing the issues, dismissed the same on the premise that the petitioner had not been able to give the explanation of non-appearance and filing the application after a gap of one year. Appeal laid before the Lower Appellate Court also met with the same fate.

He further submitted that the absence was not intentional and willful, but for the reasons mentioned in the application. The same have not been noticed by the trial Court as plaintiff was under the impression that the respondents had to come before the Court to record their statement and, therefore, could not appear. Even the counsel did not inform about the dismissal of the suit in default. No harm and prejudice would be caused to the respondents in case the suit is decided on merits subject to any terms and conditions to be imposed by this Court and, thus, prayed for setting-aside the orders under challenge.

Mr.Daman Dhir, learned counsel appearing on behalf of respondent No.2 submitted that the Courts below found that the application was filed in 2013. The application, even if to be treated in August, 2008, was belatedly filed, i.e., after almost 14 months and, therefore, rightly had been dismissed and, thus, urged this Court for upholding the orders under

challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioner, for, the Courts should not have delayed the restoration of the application, much less framed the issues and should have called upon HUDA to restore the same without any objection. Even HUDA also contested the application for no rhyme and reason. Procedural technicalities are hand made and cannot be strictly applied in such circumstances, for, the plaintiff could have been subjected to certain costs.

The impugned orders are not sustainable in the eyes of law. In order to prevent miscarriage of justice, I allow the revision petition by setting-aside the impugned orders subject to payment of ₹5,000/- as costs. In essence, the application for restoration of the suit is allowed. Suit is ordered to be restored to its original number.

Parties, through their counsel, are directed to appear before the trial Court on 5.7.2018.

May 17, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No