

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

**Civil Revision No.754 of 2014
Date of decision: May 08, 2018**

Dhilpreet Singh Gill

...Petitioner

Versus

Dr.Jagir Singh Sidhu and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Om Pal Sharma, Advocate
for the petitioner.

Mr.Namit Gautam, Advocate
for the respondents.

INDERJIT SINGH, J.

Petitioner Dhilpreet Singh Gill has filed this revision petition against respondents Dr.Jagir Singh Sidhu and M/s Franklin Laboratories under Article 227 of the Constitution of India for setting aside the order dated 04.05.1999 passed by learned Civil Judge (Junior Division), Ludhiana, vide which the suit filed by the petitioner-plaintiff was dismissed in default, order dated 20.01.2005 passed by learned Civil Judge (Junior Division), Ludhiana, vide which application for restoration of the civil suit was dismissed and also order dated 29.05.2013, vide which the application for setting aside the order dated 20.01.2005 was dismissed by learned Civil Judge (Junior Division), Ludhiana.

Notice of motion was issued. Learned counsel for the

respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

The perusal of the record shows that a civil suit has been filed by Harbeant Singh against Dr.Jagir Singh Sidhu and another. The suit has been dismissed in default on 04.05.2009 as none appeared on behalf of the plaintiff. Thereafter, an application has been filed by Harbeant Singh under Order 9 Rule 4 CPC for restoration of the suit and that application has also been dismissed in default on 20.01.2005 as none appeared on behalf of the applicant-plaintiff. Then, again Harbeant Singh filed an application for setting aside the order dated 20.01.2005 vide which the application for restoration of the suit has been dismissed in default and to restore that application. Learned Civil Judge (Jr. Divn.), Ludhiana, vide order dated 29.05.2013, dismissed the application. Learned lower Court dismissed the application firstly on the ground of limitation as the application for restoration of the suit has been dismissed on 20.01.2005 and the application to restore application for restoration has been filed on 05.05.2006 by Dhilpreet Singh Gill, who has been authorized by plaintiff Harbeant Singh. In this application, it is averred that in February 2006, the applicant enquired from his counsel regarding the proceedings of the case and it was disclosed to Dhilpreet Singh Gill that application seeking restoration of the suit has been dismissed on 20.01.2005. It is also contended that it is the negligence of the counsel and the applicant should not suffer due to negligence of his counsel.

The second point on which the application dated 05.05.2006 is dismissed is that application is to be filed under Order 9 Rule 4 CPC within

30 days, which has not been filed and further no cogent explanation has been given regarding delay of 15 months.

The perusal of the record shows that firstly Article 122 of the Limitation Act provides; “the limitation as 30 days from the date of dismissal for filing application to restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs etc.”

Learned counsel for the petitioner cited judgment passed by Hon'ble Karnataka High Court in ***Syed Mustapha Kamal Pasha and others vs. Dr.H.A.Ramachandra Gowda, 1996 AIR (Karnataka) 91***, in which it is held that no period is prescribed to file application under Order 9 Rule 4 CPC but the above-cited judgment will not apply in view of the Article 122 of the Limitation Act and further in view of the law laid down by this Court in ***Fateh Jang Singh and others vs. Gurmail Singh and others, 2017(5) RCR (Civil) 305***, in which it is held that for restoration of suit, the limitation period is 30 days. Similarly, this Court in ***Sarpal Singh vs. Malkiat Singh, 1996 (1) PLR 36***, held that application for restoration filed after 30 days of the order is time barred under Article 122 of the Limitation Act. It is also held that if no application for condonation of delay on sufficient cause is filed, application for restoration is liable to be dismissed as barred by limitation.

In view of the law laid down by this Court in above-cited judgments, it cannot be held that no period of limitation is prescribed for filing the application for restoration of the application for restoring the suit.

Further, the perusal of the record shows that no sufficient

explanation has been given regarding delay in filing the application. The application for restoration of the suit has been dismissed on 20.01.2005 and the application for restoring that application has been filed on 05.05.2006 i.e. after 15 months. Even, it is in the application that applicant came to know about dismissal of the application in February 2006. Even then, from that date, the application has not been filed within 30 days. Furthermore, it is for the party/litigant to know from his counsel regarding the status of his case or the proceedings carried out by the Court on each and every date. Not contacting his advocate for more than one year, itself shows the negligence of the applicant. Therefore, the present application in question is time barred.

In view of the above discussion, I find that the impugned orders dated 04.05.1999, 20.01.2005 and 29.05.2013 passed by Learned Civil Judge (Jr. Divn.) Ludhiana, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

May 08, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No