

(113) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7566 of 2018

Date of decision: 29.11.2018

Vishnu Dutt

.... Petitioner

Versus

Har Kishan and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Gopal Soni, Advocate for the petitioner.

B.S. Walia, J. (Oral)

[1] Revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 19.07.2010 (Annexure P-2) passed by the learned Civil Judge (Jr. Div.), Faridabad dismissing civil suit titled as Smt. Ratni and 8 others v. Har Kishan and 16 others as also for setting aside order dated 05.08.2017 (Annexure P-6) passed by the learned Civil Judge (Jr. Div.), Faridabad dismissing application for restoration of the suit.

[2] Brief facts of the case leading to the filing of the instant revision petition are that civil suit titled as Smt. Ratni and 8 others v. Har Kishan and 16 others was listed before the Court of Sh. Tarun Singal, the then Civil Judge (Jr. Div.), Faridabad for 19.07.2010 for ex parte evidence. But on the said date, the plaintiffs did not appear before the Court because they had given power of attorney to plaintiff No.4 i.e. Bhagwana i.e. maternal grandfather of the petitioner/applicant but said Bhagwana (plaintiff

No.4) did not appear before the Court. Thus, due to non-appearance of the plaintiffs, the suit was dismissed in default on 19.07.2010. It transpires that plaintiff No.4 died on 01.08.2010.

[3] The petitioner who is the grandson of Bhagwana (plaintiff No.4) and in whose favour said plaintiff No.4 i.e. Bhagwana executed a Will by giving all his movable and immovable properties to him, contacted counsel for the plaintiffs on 20.08.2012 who disclosed that the case had been dismissed in default on 19.07.2010. It was thereafter that the application for restoration of the suit dismissed in default was filed on 08.09.2012 claiming that the same was within time from the date of knowledge.

[4] It needs noticing here that the suit was filed by Smt. Ratni and 8 others against Har Kishan and 16 others for a declaration and injunction. Suit was filed by Bhagwana (plaintiff No.4) as SPA of plaintiff Nos.1 to 3 i.e. Smt. Ratni, Sh. Raj Kumar and Sh. Ran Singh only. Issues were framed on 27.11.2008 and the case was fixed for PWs on 03.06.2009 for PWs. On 03.06.2009, two PWs were present and they were examined on the same day. The case was then fixed for 28.08.2009 on which date no evidence was led by the plaintiffs despite having availed eight effective opportunities and on 19.07.2010 none appeared on behalf of the plaintiffs, whereupon the suit was dismissed in default.

[5] The stand of the petitioner that the suit had been filed by the plaintiffs through plaintiff No.4 i.e. Bhagwana, SPA, therefore, the other plaintiffs were not aware about the proceedings of the Court in the case is not believable because perusal of the order (Annexure P-6) shows that plaintiff No.4 Bhagwana was contesting the case only on behalf of plaintiff Nos.1 to 3 as their SPA, but no SPA had been given by plaintiff Nos.5 to 9 to Bhagwana and they themselves were pursuing the case. However, none

of the plaintiffs i.e. plaintiff Nos.1 to 3 and 5 to 9 ever bothered about the case. The application for restoration was filed on 08.09.2012 whereas Bhagwana plaintiff No.4 died on 01.08.2010. Neither is it the case of the petitioner that any of the plaintiffs moved an application for restoration of the suit dismissed in default on 19.07.2010 nor was the petitioner a party to the suit. Besides, the petitioner has not disclosed the authority on the basis of which the application for restoration has been filed on behalf of all the plaintiffs. Besides, the application was moved in September 2012 i.e. more than two years after the dismissal of the suit in default without any explanation for delay being given. Accordingly, no case is made out warranting interference with the reasoned order passed by the learned trial Court.

[6] Revision petition is, accordingly, dismissed.

(B.S. Walia)
Judge

29.11.2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No