

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

126

CR No.7972 of 2016 (O & M)
Date of Decision:15.05.2018

Mahant Darshan Dass Chella of Mahant Brahm Dass Chela of Pritam Dass
...Petitioner

Versus

Krishan Gopal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Singla, Advocate
for the petitioner.

Mr. S.S. Momi, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-petitioner is in the revision petition against the order passed by the learned trial Court affirmed in the appeal declining the prayer for restoration of the suit.

It is not disputed that when the plaintiff was leading his evidence in chief, the defendant filed an application under Section 10 of the Code of Civil Procedure for stay of the suit. Thereafter, proceedings started on the application under Section 10 of the Code of Civil Procedure filed by the defendant. The proceedings on the application under Section 10 of the Code of Civil Procedure remained pending before the Court for a period of almost two years. The case was being adjourned for consideration on the application. Main suit was not listed for any proceedings on the day when it was dismissed in default (dismissed for non-prosecution) i.e. 08.04.2010.

In the considered opinion of this Court, the order dated

under Order 9 Rule 8 of the Code of Civil Procedure only if the suit was listed for some proceedings. At the most the learned trial Court could have allowed the application under Section 10 of the Code of Civil Procedure filed by the defendant, which was listed before the Court on 08.04.2010.

In view of the aforesaid, the order dated 08.04.2010 is set aside. Suit is restored to its original number.

Parties through their counsels are requested to appear before the learned trial Court on 31.05.2018.

Revision petition is allowed.

15.05.2018
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(ANIL KSHETARPAL)
JUDGE

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