

CR No.8206 of 2016

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

CR No.8206 of 2016 (O&M)

Date of decision:27.11.2018

Kartar Singh

... Petitioner

Vs.

Ajaib Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.G.S.Sidhu, Advocate
for the petitioner.

Mr. I.S.Brar, Advocate
for respondents No.1, 2, 5 and 7.

AMIT RAWAL J.

The petitioner-plaintiff has assailed the order dated 01.08.2016 (Annexure P-2), whereby, an application for restoration of the civil suit bearing no.82 of 2014 titled as 'Kartar Singh vs. Ajaib Singh and others' dismissed in default on 04.10.2013, has been dismissed.

It is submitted that petitioner-plaintiff had filed a suit for declaration by way of possession to the effect that out of land measuring 18 kanals 9 marlas, he had 1/40 share; 1/5th share out of 10 kanals 1 marla; 1/5th share out of 3 kanals 6 marlas, 1/10th share out of 2 kanals 10 marlas and 4 kanals 12 marlas respectively being ancestral and Joint Hindu Co-parcenary property.

The defendants after availing two opportunities filed the

written statement on 14.05.2013 and thereafter, the case was fixed for 25.05.2013 for the evidence of the petitioner but the plaintiff being a foreign citizen left the India on 06.03.2013 and under compelling circumstance, suddenly, went to Canada and then America as the family of his son is living in Canada. There was some serious problem in his son's family. When he came back to India in the year 2014, realized that suit was dismissed for non-prosecution and as such the application for restoration was filed on 29.09.2014 within a period 30 days from the date of the knowledge as the arrival in India was on 29.08.2014. The trial Court has erroneously dismissed the application.

Mr. I.S.Brar, learned counsel appearing on behalf of the respondents No.1, 2, 5 and 7 submitted that plaintiff was aware of the fact that suit was dismissed in default and cannot be expected to inquire from the counsel about the pendency of the suit. Ignorance of law is no bliss, thus, rightly so the application was dismissed.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the Court below should not have adopted the harsh approach in declining the application particularly when no issues were framed as the petitioner had returned to India on 29.08.2014 and his entire focus was only on the personal family matter as per the reasons assigned in the application. The application was filed within a period of 30 days from the date of his coming to India and could not have been said to be barred by law of limitation.

In order to prevent miscarriage of justice and advance justice, I am of the view that the impugned order is not sustainable and the same is hereby set aside. The suit, aforementioned is restored to its original number subject to payment of costs of ₹10,000/- which would be a condition precedent.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 27, 2018
savita

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