

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

CR No.795 of 2017(O&M)
Date of Decision: 21.11.2018

Rajinder Gupta

... Petitioner

Vs

Sutlej Co-operative House Building Society Ltd. ... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has challenged the order dated 07.09.2016 passed by Additional Civil Judge (Senior Division), Ludhiana vide which application for restoration of the suit which was dismissed in default on 21.10.2013 was dismissed.

[2]. Plaintiff/petitioner filed a suit for declaration and mandatory injunction to the effect that plaintiff is the member of defendant Society and is entitled for a plot. Directions have been sought against the defendant to allot the plot in favour of the plaintiff against the amount deposited on 31.05.2002. Defendant could not be served for want of filing registered cover/AD despite the opportunities granted to the plaintiff. The suit was dismissed in default for want of compliance vide order

dated 21.10.2013.

[3]. An application was filed for restoration of the suit on 22.04.2014 on the premise that the learned counsel engaged by the plaintiff was negligent in conducting the proceedings as he did not inform the petitioner in respect of requirement, rather made it to believe that his personal appearance was not required and also demanded extra fee to the tune of Rs.10,000/- which was not paid by the petitioner. The earlier learned counsel did not entertain the petitioner even on meeting dated 31.03.2014. Thereafter, the file of the case was inspected by the petitioner on 01.04.2014 and he came to know about the factum of order dated 21.10.2013.

[4]. In the application filed for restoration of the suit, respondent was duly served, but respondent did not prefer to come present in the Court. The application was dismissed *ex parte* vide the impugned order on the premise that the presence of learned counsel was recorded in every order including the order dated 21.10.2013. The suit was dismissed for want of filing of registered cover/AD and copy of plaint for the notice to the defendant. Application came to be filed after a period of six months after dismissal of the suit in default. Trial Court did not go with the contention of the learned counsel for the petitioner and dismissed the application vide order dated 07.09.2016.

[5]. At the time of issuance of notice of motion on 10.08.2018, following order was passed by this Court:-

*“Learned counsel for the petitioner contends that in terms of para No.4 of the application for restoration of the suit, filing of separate application under Section 5 of the Limitation Act was not necessary as the petitioner has already pleaded sufficient cause for condonation of delay. Learned counsel refers to **Bhagmal and others Vs. Kunwal Lal and others, (2010-4) PLR 267** and **Rattan Chand Vs. State of Punjab and others, 2007(1) HRR 116.***

Notice of motion for 21.11.2018.”

[6]. Despite service, none has come forward to represent the cause of the respondent.

[7]. Evidently, the suit was dismissed in the absence of the defendant wherein the defendant was not served for want of RC/AD. Even in the application for restoration of the suit, defendant did not appear for the reasons best known to the defendant. As per ratio laid down in **Bhagmal and others case supra** and **Rattan Chand's case (supra)**, the sufficient cause in not filing the application for restoration of the suit emanates from the application for restoration itself then there is no need to file separate application for condonation of delay.

[8]. At the time of dismissal of the suit in default, defendant was not served. It was an *ex parte* process and the

controversy ought to have been viewed from sympathetic angle. The meritorious matter at best could be decided on merits and the same cannot be thrown at the threshold of technicalities. For the omission on the part of the plaintiff in not remaining diligent and moving the application after a period of six months, the plaintiff can be burdened with costs. Since the case of the defendant could not be projected at the stage when the impugned order came to be passed, therefore, I deem it appropriate to accept this revision petition and restore the suit before the trial Court. Impugned order dated 07.09.2016 passed by Additional Civil Judge (Senior Division), Ludhiana is hereby set aside, however subject to payment of costs of Rs.15,000/- to be deposited by the plaintiff in the District Legal Services Authority, Ludhiana. Payment of costs shall be the condition precedent for granting indulgence by the trial Court.

21.11.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No