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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-886-2016

Date of decision : 06.02.2018

Kulwant Singh

... Petitioner(s)

Versus

Darshan Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Chauhan, Advocate
for the petitioner.

Ms. Swati Verma, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition has been preferred against the impugned order dated 09.12.2015 (Annexure P-7), whereby an application for restoration of the suit, which was dismissed in default vide order dated 13.02.2012, has been dismissed being barred by law of limitation.

Mr. R.S. Chauhan, learned counsel appearing on behalf of the petitioner submits that the petitioner-plaintiff had filed the suit claiming following relief:-

"Suit for declaration to the effect that the plaintiffs are owners in possession of the land measuring 4K-0M i.e. 0K-16 M being 16/160 share out of land comprising in Khewat/Khatoni No.469/671, Khasra No.26//3 (8-0), i.e. 0K-16M and land measuring 3L-4M being 1/5 share of land comprised in khewat/khatoni No.411, 413/572, 575, Khasra No.26//4 (8-0),

5(8-0), as per jamabandi for the year 2005-06, situated in village Begowal, Tehsil Bholath, District Kapurthala.

For further declaration to the effect that mutation No.9791 sanctioned on the basis of sale deed dated 27.1.2003 in favour of Arjan Singh father of the plaintiffs is valid and legal one.

AND

Suit for permanent injunction restraining the defendant, his agents, employees for ever from dispossessing the plaintiffs from the land mentioned above forcibly and illegally or in any manner whatsoever.”

The suit aforementioned was fixed for plaintiff's evidence, but the counsel did not appear on 13.02.2012, resulting into, dismissal of the suit in default. However, it was informed by the counsel that the next date before the Court was 06.08.2012, however, when the applicant/petitioner/plaintiff came to Court on 06.08.2012, it came to his knowledge that the suit was already dismissed in default vide order dated 13.02.2012, resulting into, an application for restoration on 12.08.2012. The application was contested by the other side, necessitating the trial Court to frame the issues. The trial Court dismissed the application on the ground that none of the grounds had been proved on record, therefore, the application was barred by law of limitation. He further submits that the technicalities in the application should not come in the way of the petitioner-plaintiff as no harm and prejudice would be caused to the respondent-defendant, in case the suit is heard on merits.

On the contrary, Ms. Swati Verma, learned counsel appearing on behalf of the respondent No.1-defendant(s) submits that no explanation has come forward in moving the application after six months. In the absence of diary and brief of the counsel, the story coined in the application has been

found to be based upon falsehood, thus, urges this Court for dismissal of the present revision petition with exemplary cost.

I have heard the learned counsel for the parties and appraised the paper book. The facts as noticed above are not controverted. It is also a matter of fact that the suit was listed for plaintiff's evidence. The plaintiff has to exercise "Due Diligence" in pursuing the matter and should not dependent wholly upon the counsel. No explanation has come forward in that regard, much less, diary and brief has been proved on record. Be that as it may, in order to advance and to prevent miscarriage of justice, I deem it appropriate to set aside the impugned order dated 09.12.2015 (Annexure P-7) subject to the cost of ₹10,000/- to be paid to the counsel representing respondent No.1/defendant(s) before this Court, within a period of one month from today, failing which, the impugned order, under challenge, shall automatically come into force. The payment of cost shall be a condition precedent.

It is made clear that the plaintiff shall make endeavour to complete the trial of the suit as expeditiously as possible.

The present revision petition stands allowed.

06.02.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**