

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

CR-8586-2014

Date of Decision: May 17, 2018

Hari Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ajit Sihag, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana,
for the respondents.

ARUN PALLI, J. (ORAL)

The petitioner is aggrieved by an order, dated 04.05.2012, vide which his application seeking restoration of the suit, that was dismissed in default on 29.08.2011, has since been dismissed, as also the order dated 02.09.2014, vide which even the appeal preferred against the order dated 04.05.2012, was rejected by the Appellate Court.

Concededly, the suit filed by the petitioner was dismissed on 29.08.2011, on account of non-appearance of his counsel. It is not disputed that an application for restoration of the suit was moved within 22 days, i.e. on 23.09.2011. However, the Courts below declined the prayer of the petitioner-plaintiff on the ground that if the counsel for the petitioner was busy in an another Court, he ought to have ascertained the status of the suit, the same day, and had he done so, he would have moved an application, seeking restoration of the suit, either that day itself or the very next day. But he waited for more than 22 days, which showed the malafide intention on

part of the petitioner, and his counsel.

Ex facie, the analysis as also the conclusion arrived at by both the Courts, is exceptionally harsh. Even if it is assumed that counsel for the petitioner was a bit negligent or remiss in pursuing the matter, the fact that the required application, seeking restoration of the suit, was moved within limitation, and with a plausible explanation, the same ought to have been accepted to secure the ends of justice. Therefore, without dilating much upon the issue, it is deemed appropriate to set aside the orders, dated 29.08.2011 and 04.05.2012, as also the judgment dated 02.09.2014. The suit is accordingly restored to its original number. And, the revision petition is accordingly disposed of in the following terms;

- (i) Petitioner shall be granted only two effective opportunities to lead and conclude his entire evidence, on the dates that shall be specified by the Trial Court in this regard.
- (ii) In the event of default or if the petitioner fails to lead his evidence on the dates, specified by the Trial Court, the matter shall not be adjourned on any ground, and the evidence of the petitioner shall be deemed to have been closed.
- (iii) This, however, shall be subject to costs of Rs.20,000/-, which shall be a condition precedent to prosecute the suit further.

(ARUN PALLI)
JUDGE

May 17, 2018
P Kapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO