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

CR-8758-2017 (O&M)

Date of decision : 23.03.2018

Smt. Pamela Bhardwaj

... Petitioner(s)

Versus

Jyotsna and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Matya, Advocate
for the petitioner.

Mr. Jyotsna, Advocate/respondent in person.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 24.10.2017, whereby an application at the instance of respondent No.1 for restoration of the Civil Suit titled as “Jyotsna V/s Ajay Bhardwaj” (App No.404 of 2017) seeking injunction (now amended for declaration), challenging the decree dated 12.04.2014, which was dismissed in default, has been allowed.

Learned counsel for the petitioner submitted that the respondent No.1-plaintiff instituted the aforementioned suit along with interim application though there was already interim stay, but the same was dismissed in default on 11.10.2017. However, an application for restoration of the suit was filed on 12.10.2017 and notice of the same had been issued to the petitioner, but the Court below on the consideration of the

aforementioned application, vide impugned order, before the suit could be restored, granted the interim stay restraining the defendant/petitioner from creating third party interest and also disturbed the settled possession in the suit property bearing No.C-73, Ardee City, Sector 52, Gurgaon. He submitted that the aforementioned order could not have been passed as there was no suit in the eyes of law, therefore, inherent powers under Section 151 of the Code of Civil Procedures could not have been exercised.

Learned counsel for the respondents submitted that the suit has been restored, but she does have the order. As regards the grant of interim injunction while exercising the powers under Section 151 CPC, she relied upon the *ratio decidendi* culled out by Allahabad High Court in **“Basant Lal and another V/s Lakshmi Chand” AIR 2007 AII 32**, wherein the aforementioned opinion has been expressed in favour of a person, who was seeking restoration of the suit, thus, urges this Court for dismissal of the revision petition being bereft of the reasoning, much less, delaying tactics to tire out the respondents-plaintiffs.

I have heard the learned counsel for the parties and appraised the paper book.

Before I could give an opinion, specifically ask a question to Mr. Matya, as to whether his client is serious about opposing the application for restoration, for, it would unnecessarily delay the adjudication of the main *lis*, which the parties should lay an emphasis. He submits that he does not have any instructions from his client. Be that as it may, I am of the view that no useful purpose would be served on behalf of the petitioner-defendant, who is none-else, but husband of respondent No.1 and affirming the application for restoration subject to any terms and conditions, which

this Court may deem fit appropriate, but I cannot remain unmindful of the fact that the application for restoration was moved only on next day i.e. 12.10.2017. It would be too farcical exercise for the Court below to adjudicate the application by framing the issues without any rival reasons.

Resultantly, while exercising the powers of Superintendence under Article 227 of the Constitution of India, the impugned order dated 11.10.2017, whereby the suit aforementioned has been dismissed in default, has been set aside and the trial Court is directed to decide the interim application after giving opportunities to the parties by filing their respective documents and reply, if any, in accordance with law.

It is made clear that interim order granted by the trial Court shall be in existence for a period of one month from the date when the certified copy of this order is available or uploaded on the web-site of this Court, thereafter, it shall be subject to the adjudication of the interim application by the trial Court.

With the aforesaid observations, the revision petition stands disposed of.

23.03.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**