

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

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**CM-3855-CII-2018 in/and
FAO-5445-2013 (O&M)
Date of Decision : 26.02.2018**

Sehaj Pal Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Om Pal Sharma, Advocate
for the appellant.

Mr. Ajay Pal Singh Gill, D.A.G., Punjab
for the respondent No.1.

Mr. B.S. Khehar, Advocate
for respondent No.2.

None for the remaining respondents.

AJAY TEWARI, J. (Oral)

CM-3855-CII-2018

For the reasons recorded, the application is allowed subject to all just exceptions. Judgment and Decree dated 27.03.2010 is taken on record.

FAO-5445-2013 (O&M)

This appeal has been filed against the order of the Lower Appellate Court dismissing the application for restoration of the appeal.

Brief facts of the case are that the appellant had filed a suit which was dismissed. Thereafter he filed an appeal but since his counsel did not appear on the date fixed i.e. 05.08.2011 the same was dismissed in default. He moved an application for restoration of the same on 01.11.2011

but the same was dismissed as being beyond limitation.

Counsel for the appellant has argued that as far as the appellant is concerned, there was no default on his part. After his suit was dismissed he filed an appeal in time and it was only because the counsel did not appear that the appeal was dismissed in default and the appellant came to know later and from the date of knowledge there was no delay.

On the other hand, counsel for the respondent No.2 has argued that the ground mentioned in the application filed for restoration was completely vague and unsubstantiated allegations had been levelled against the counsel for which no action was taken. As per him, there is a good chance that after engaging a counsel the appellant had not paid his fees and prolonging the payment of fees for one reason or the other and on one day probably the counsel stopped appearing out of frustration.

In my considered opinion, the arguments of the counsel for the respondent No.2 carries more weight. I have gone through the application for restoration, para No.5 thereof is most relevant and the same is reproduced herein below:-

“5. That when the applicant realized that his earlier counsel did not contact him, the applicant approached him personally on 12.09.2011 and the counsel failed to respond him property and he felt that some foul had been played upon him and then the applicant/appellant engaged another counsel Sh. Amit Moldi, Advocate and got inspected the file of the case and then he came to know that the appeal aforesaid has been dismissed in default on 5.8.2011. The applicant immediately applied for the certified copy of order dated 5.8.2011, on 12.9.2011, which was supplied to him on 4.10.2011 and as such the present applicant is well within limitation from the date of knowledge after deducting the time spent in obtaining the certified copy of the order dated 5.8.2011.”

A perusal of para No.5 reveals that it is deliciously vague, as there is an allegation against the counsel but even today the counsel for the appellant has accepted that no action has been taken against that counsel. In the circumstances, there can be no ground to restore the appeal.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

February 26, 2018
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**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No