

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

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FAO-289-2017 (O&M)

Date of Decision : 25.01.2018

Krishan Kumar and another

..... Appellants

Versus

Smt. Manni (deceased) through LRs and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Atul Lakhanpal, Sr. Advocate
with Mr. Arjun Lakhanpal, Advocate
for the appellants.

Mr. Dinesh Ghai, Advocate
for the respondent No.1.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the order of the lower Appellate Court refusing to restore the appeal.

Brief facts of the case are that the original appeal was listed for hearing on 08.11.2016 and was dismissed in default. Eight days later on 16.11.2016 the application for restoration was filed which has been declined by the lower Appellate Court and that is how the appellants are before this Court.

Learned senior counsel appearing on behalf of the appellants has argued that the promptitude with which the application for restoration was filed clearly showed that the appellants were serious about the appeal and the omission to appear was unintentional.

On the other hand the counsel for the respondent No.1

has argued that the perusal of the order would show that on every date the

appellants had changed their counsel and the lower Appellate Court has justifiably come to the conclusion that they are merely interested in prolonging the case. As per him the decree for possession of 92 Kanal has now remained unexecuted for 4 years and the respondent has been put to substantial loss because possession is still with the appellants.

In my opinion, the concerns of both the parties can be met. As regards the fact that decree is remained unexecuted for 4 years, I deem it appropriate to direct the appellants to deposit the mesne profits @ Rs.1000 per kanal per year. This would amount to Rs.3,68,000/-. Let the appellants make a fixed deposit in the name of the lower Appellate Court and pay costs of Rs.40,000/- in favour of the respondent. The impugned order is set aside and the matter is remanded back to the lower Appellate Court to decide it on merits. Parties through counsel are directed to appear before the lower Appellate Court on 15.02.2018. It is made clear that in case the order regarding fixed deposit and the costs are not complied with the present appeal would be deemed to be dismissed. The amount of money which would accrue in the fixed deposit would enure to the benefit of the party successful in the appeal.

Appeal stands disposed of.

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

January 25, 2018

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**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No