

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1162 of 2018

Date of decision: 07.05.2019

Sona Devi

....Petitioner

Versus

Sanjeev Kumar @ Sanju and others

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Nonish Kumar, Advocate for the petitioner.

Mr. Prateek Gupta, Advocate for the respondents.

B.S. Walia, J.

1. Revision petition has been filed under Article 227 of the Constitution of India praying for setting aside order Annexure P-6 dated 25.4.2017 passed by the learned Additional Civil Judge (Sr. Division), Karnal dismissing the application filed by the petitioner for restoration of the suit by setting aside order dated 21.4.2015 vide which the suit filed by the petitioner was dismissed in default for want of prosecution.

2. Brief facts of the case leading to the filing of the present petition are that the petitioner filed a suit for damages. Unfortunately the same was dismissed in default on 21.4.2015 on account of clerk of counsel for the petitioner having noted wrong date of 21.8.2015. Application was moved on 28.10.2015 for restoration of the suit on the ground that on 21.8.2015 the petitioner was not well and could not go to the Court and when she approached her counsel on 27.10.2015 to know the fate of the suit she came to know about order dated 21.4.2015. The same was opposed by the respondents, whereupon, the

application for restoration of the suit was dismissed by the learned trial Court vide order Annexure P-6 dated 25.4.2017.

3. Learned counsel for the petitioner contended that the impugned order is legally unsustainable and the learned trial Court failed to take into account that application for restoration was filed in the year 2015 itself within period of limitation from date of knowledge of order dated 21.4.2015 while the application was decided in the year 2017 and that the impugned order was passed without considering the case as set up by the petitioner in the correct perspective.

4. On the other hand, counsel appearing on behalf of the respondents has vehemently opposed the petition on the ground that no case whatsoever is made out for restoration of the suit dismissed in default.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly, the suit was dismissed in default on 21.4.2015. The plea in the application for restoration was that clerk of counsel for the petitioner had wrongly noted the date as 21.8.2015 instead of 21.4.2015 and on 21.8.2015, the petitioner-plaintiff could not appear in Court as she was suffering from fever. Therefore, she could not attend the case while her counsel was also busy in some other case. The learned trial Court rejected the plea of the petitioner on the ground that although she had pleaded she was suffering from fever yet her application was not supported by a medical certificate and further that although it had been stated that clerk of the counsel had wrongly noted down the date as 21.8.2015 instead of 21.4.2015, therefore, none had put in appearance before the Court on 21.4.2015 but not even copy of brief of the counsel had been placed on the file to show that in fact clerk of the counsel for the petitioner had wrongly noted the date 21.8.2015 instead of 21.4.2015. The learned trial Court also took into account that earlier also suit of the petitioner-plaintiff was

which was later on restored on application moved by the petitioner-plaintiff. In the earlier application moved for restoration of the suit dismissed in default, similar ground was taken by the petitioner-plaintiff when she could not appear of wrong date having been noted by clerk of the counsel and in the application moved for restoration of the suit dismissed in default on 21.4.2015, similar plea of wrong date having been noted by clerk of the counsel had been taken without producing brief of counsel in support of plea or any medical certificate to show that the petitioner-plaintiff was suffering from fever. Besides, counsel for the petitioner-plaintiff also did not put in appearance on the date fixed i.e 21.4.2015. The plea that the date was wrongly noted as 21.8.2015 has been vehemently opposed by counsel for the respondents. Learned counsel for the respondents further submitted that earlier also the suit was dismissed in default on 16.9.2011. Besides, the son of the petitioner had also filed a suit against the respondents on the same ground as in the present suit and the same was also dismissed in default by the court of Sh. Bhupinder Nath, the then learned Civil Judge (Sr. Division), Karnal vide order dated 19.12.2011. It has further been contended that prior to the dismissal of the suit in default on 21.4.2015, the case was listed on 20.4.2015 but on request of counsel for the petitioner-plaintiff, the Court reluctantly adjourned the case to 21.4.2015 as last opportunity. Learned counsel for the petitioner has not controverted that the case was listed on 20.4.2005 prior to dismissal of the civil suit in default on 21.4.2015.

7. In the circumstances, the plea that date of case was wrongly noted as 21.8.2015 does not appear to be factually correct. The petitioner was represented through counsel. Even if the petitioner could not appear on 21.8.2015, the petitioner's counsel was required to be present and in any case even if the petitioner was not present on 21.8.2015, the petitioner's counsel on

enquiry and learnt about the dismissal of the suit on the earlier date 21.4.2015. The matter does not rest here. The application for restoration was filed on 28.10.2015 taking up the plea of wrong date having been noted by clerk of counsel without producing the diary of the counsel or the brief of the case to show that in fact a wrong date had been noted nor was any affidavit of the counsel or his clerk filed in support of the plea of wrong date having been noted. The civil suit was earlier also dismissed in default in 2011 and at that point of time also was got restored on identical plea of wrong date having been noted by clerk of counsel for the petitioner. Although the case requires sympathetic consideration yet in the facts and circumstances of the case, in the absence of sufficient cause having been made out, sympathetic considerations cannot be allowed to override and subvert the rule of law.

8. In the circumstances, no case is made out warranting interference with the order passed by the learned trial Court.

9. The revision petition being bereft of merit is accordingly dismissed.

May 07, 2019

ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No