

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

**C.R. No.1557 of 2018 (O&M)
Date of Decision.26.03.2019**

Tarsem Singh Sansoa

...Petitioner

Vs

Manjit Singh and others

.Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Zoheb, Advocate for
Mr. M.S. Sachdev, Advocate
for the petitioner.

None for the respondents.

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AMIT RAWAL J. (ORAL)

As per office report, counsel had collected the notice but not furnished receipt or acknowledgment.

Learned counsel for the petitioner submits that service of respondent No.3 be dispensed with for the present as he is a pro forma respondent.

The present revision petition is directed against the impugned order dated 5.1.2018 (Annexure P-1) whereby the application for restoration of the suit dismissed in default vide order dated 14.07.2017 (Annexure P-2), has been dismissed.

The petitioner-plaintiff on 18.04.2013 filed civil suit for declaration as owner in possession to the extent of half share in house measuring 11 marlas situated at Friends Colony, Line No.3, Near Prempura, Phagwara, District Kapurthala on the basis of sale deed dated 27.10.1997 with further declaration that name of defendant No.2 be removed and for setting the sale deed dated 16.04.1998 allegedly executed by plaintiff No.2 in favour of defendant No.1 and

also for possession of house measuring 11 marlas with consequential relief of permanent injunction.

It is stated that the suit was pending before the Court below, however, during the pendency of the suit, an application under Order 6 Rule 17 CPC for amendment of the plaint was pending and the same is reflected from the order dated 07.12.2015 (Annexure P-8). The matter was adjourned for addressing argument and reference to the Lok Adalat as there was chance of compromise. However, on 14.07.2017, which was no working day in the trial court, the suit was dismissed for default. The application for restoration submitted on 15.07.2017 despite contest and explanation given therein, has been dismissed.

Learned counsel for the petitioner submitted that the Courts below should have restored the suit by allowing the application and laid focus on adjudication of the *lis*.

As per office report, respondents No.1 and 2 refused to accept summons and service upon respondent No.3 has been given up.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is force and merit. The order under challenge reflects that the Court had been too hyper-technical in non-suiting the petitioner. It is not the case that petitioner was not interested in pursuing the suit. No person made to suffer on account of lapse of counsel and particularly, when the previous zimni orders reveal that all the time counsel have been appearing and the matter was being adjourned for hearing. One non-

appearance cannot be fatal in the application under Order 6 Rule 17 CPC as noticed in the orders under challenge.

In view of such circumstances and in the interest of justice, the impugned order is set aside and the suit is ordered to be restored at its original number.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

March 26, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No