

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

CR-2427-2016

Date of decision: 26.11.2019

Kallu Khan

.....Petitioner.

vs.

Islam and others

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. Amit Jain, Advocate for the petitioner.
Mr. Satish Chaudhary, Advocate for respondents.

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Sanjay Kumar, J. (ORAL)

This revision, filed under Article 227 of the Constitution, arises out of the order dated 9.2.2016 (Annexure P-4) passed by the learned District Judge, Mewat, confirming the order dated 12.8.2015 (Annexure P-2) passed by the learned Additional Civil Judge (Senior Division), Ferozepur Jhirka.

The aforestated orders were passed in connection with the restoration application filed by the petitioner herein, the plaintiff in the suit, seeking its restoration to the file. The said suit was dismissed for non-prosecution on 9.12.2009.

Perusal of the orders under revision reflects that the trial Court took note of the fact that the case had been coming up for the evidence of the petitioner-plaintiff and it had been adjourned twice, viz., on 9.11.2009 and 25.11.2009, for that purpose. The trial Court also noticed that on 9.12.2009, though the matter was called several times,

there was no representation for the petitioner-plaintiff and the suit

accordingly came to be dismissed for default. The trial Court observed that the petitioner-plaintiff was indulging in luxurious litigation and accordingly dismissed the restoration application. In appeal, the appellate Court found fault with the trial Court for keeping the restoration application pending for six years, by granting adjournments time and again to the respondents therein. The appellate Court found that thirty such adjournments had been availed by the respondents. However, on merits, the appellate Court agreed with the reasoning of the trial Court that the petitioner-plaintiff had not evinced reasonable care and diligence in prosecuting the suit and confirmed the trial Court's order of dismissal of the restoration application.

Mr. Amit Jain, learned counsel, would point out that the very same appellate Court considered another order passed on the same lines in Civil Appeal No.97 of 2015 and by order dated 26.2.2016, restoration of the suit was permitted. A copy of the order dated 26.2.2016 passed in Civil Appeal No.97 of 2015 is placed on record. Perusal thereof reflects that the factual situation in that case was similar to that obtaining in the case on hand. In that case also, the suit had been adjourned thrice for the purpose of enabling the plaintiff therein to adduce evidence and on the third occasion, it came to be dismissed for default. However, the cases are distinguishable in one significant aspect. The suit in that case was dismissed on 26.8.2014 while the application for restoration was dismissed on 14.10.2015 and the appellate Court restored the suit by its order dated 26.2.2016. In effect, the time lag in the sequence of events was far shorter than that in the case on hand. It may be noted that the suit

in the present case was dismissed on 9.12.2009 while the application for its restoration was dismissed by the trial Court on 12.8.2015 and the appellate Court confirmed the said order on 9.2.2016.

In the case on hand, the reason cited in the restoration application was that the counsel for the petitioner-plaintiff was available in the Court of the learned Civil Judge (Junior Division), Ferozepur Jhirka, and when he came to the trial Court, he found that the suit had been dismissed due to his non-appearance. Significantly, the counsel for the petitioner-plaintiff made no effort on the same day or soon thereafter to seek its restoration and filed the subject restoration application only two weeks thereafter on 23.12.2009.

The fact however remains that the petitioner-plaintiff paid court-fees to the tune of Rs. 18,770/-. The fact also remains that the time lag in this case was attributable to the number of adjournments obtained by the respondents herein, the defendants in the suit, during the course of the hearing of the restoration application. In such circumstances, this Court is of the opinion that one opportunity may be given to the petitioner-plaintiff to prosecute his suit, subject to suitable conditions.

The civil revision is accordingly allowed, setting aside the orders under revision. The restoration application filed by the petitioner-plaintiff is allowed. The suit shall stand restored to file, subject to deposit of costs of Rs. 25,000/- by the petitioner-plaintiff to the credit of the suit within four weeks from the date of receipt of a certified copy of this order. The deposited costs shall be made over to the defendants in the suit unconditionally. Upon presentation of proof of deposit of the costs, the

trial Court shall take up the suit in right earnest and dispose it off as expeditiously as possible.

No order as to costs.

(SANJAY KUMAR)
JUDGE

26.11.2019
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