

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

Surjan Singh**Petitioner**
Vs
M/s Durga Trading Company ...**Respondent**

Present: Mr. Akshay Kumar Jindal, Advocate and
Mr. Samar Partap Singh and
Ms. Shruti Goel, Advocate
for the petitioner.

[1]. Petitioner has preferred this revision petition against the order dated 05.04.2018 passed by the Addl. District Judge, Kurukshetra whereby the application filed by the petitioner for restoration of the appeal was dismissed.

[2]. Notice of motion was issued on 24.04.2018 subject to deposit of an amount of Rs.1,50,000/- within 10 days from that day. Execution of decree was ordered to be stayed. Time to deposit the aforesaid amount was extended upto 14.05.2018 vide order dated 10.05.2018. Petitioner has deposited an amount of Rs.1,50,000/- vide deposit order No.293 dated 14.05.2018 in the Punjab and Haryana High Court.

[3]. It appears from the record that the appeal before the Appellate Court was filed by the appellant through Mr. A.P. Vijn, Advocate after affixing requisite court fee. The aforesaid Advocate suffered a statement on 12.09.2016 that he had no instructions to appear on behalf of the appellant. The lower Appellate Court issued notice to the appellant for 19.09.2016. The appellant again approached the said Advocate to appear on his behalf and he statedly gave assurance to the appellant that he would appear in the case. The Advocate did not appear on the date fixed i.e. 19.09.2016 and the appeal was dismissed for non-prosecution on account of absence of the appellant as well as his counsel. The appellant acquired the knowledge of the aforesaid fact only on 10.08.2017, when he received summons in execution proceedings. The application for restoration of the appeal was filed on 17.08.2017. The application for condonation of delay for filing the application for restoration of appeal was allowed by the Addl. District Judge, Kurukshetra vide the impugned order itself, but the appeal was not restored on the ground that there was no sufficient ground to restore the same.

[4]. The suit for recovery of principle amount of Rs.3,40,427/- along with simple interest @ 6% per annum with effect from 31.01.2017 till final realization of the amount was decreed by the trial Court vide the judgment and decree dated

29.11.2013. After expiry of three months, the plaintiff was entitled to recover the entire decretal amount along with interest @ 8% per annum from the date of passing of final decree till final realization of the amount.

[5]. By this time the interest part must have been swallowed. There appears to be some omission on the part of the appellant in pursuing the appeal in a *bona fide* manner. When notice of attachment of the property of the appellant was issued by the executing Court, it is only then the applicant woke up from slumber and filed the application for restoration of the appeal.

[6]. It is a settled principle of law that the merits of the case cannot be sacrificed at the *altar* of technicalities. The lower Appellate Court has condoned the delay in filing the application for restoration of appeal, but at the same time the appeal has not been restored. An amount of Rs.1,50,000/- has already been deposited by the petitioner in order to show his *bona fide*.

[7]. In view of above, this revision petition is accepted. The impugned order dated 05.04.2018 passed by the Addl. District Judge, Kurukshetra is hereby set aside. The lower Appellate Court is directed to decide the appeal on merits after restoring the same. However the omission on the part of the appellant

would attract imposition of costs of Rs.20,000/- to be paid to the respondent.

[8]. The payment of costs shall be the condition precedent for the lower Appellate Court to grant indulgence in the context of restoration of the appeal and to decide the same on merits. Both the parties are directed to appeal before the lower Appellate Court on 19.09.2019.

[9]. The lower Appellate Court shall decide the appeal in accordance with law without being influenced by any statement of fact made hereinabove. The facts are noticed only for the purpose of disposal of the present revision petition.

[10]. The amount of Rs.1,50,000/- deposited by the petitioner vide order dated 24.04.2018 be remitted to the executing Court. The executing Court would deposit the same in some fixed deposit carrying maximum interest and the same shall be paid to the successful party.

August 22, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No