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

CR No. 4429 of 2015 (O&M)
Date of Decision: 05.04.2019

Nanak Ram Jaisinghani

-Petitioner

Vs

Suresh G. Nanwani @ Sammy

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kunal Dawar, Advocate, for
Mr. Dhruv Kapur, Advocate,
for the petitioner.

Mr. Atul Lakhanpal, Sr. Advocate, with
Mr. Arvindpal Singh, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioner has assailed the order dated 13.05.2015 passed by Additional District Judge, Faridabad vide which order dated 21.10.2013 passed by Civil Judge (Senior Division), Faridabad was upheld and the prayer for restoration of the suit was declined.
2. Perusal of the record would show that vide order dated 29.09.2010, last opportunity was granted to the plaintiff to conclude his evidence on 16.11.2010.
3. On 16.11.2010, an application was filed for

adjournment of the case on behalf of the plaintiff. The Civil Judge (Junior Division), Faridabad adjourned the case only to 17.11.2010 for cross-examination of plaintiff and for leading remaining evidence.

4. On 16.11.2010, following order was passed:-

*“Present: Sh. S.P. Sharma for plaintiff.
Sh. Yogesh Sharma, Counsel for
Defendant.*

*Plaintiff whose cross examination
was to be conducted today is not present his
counsel has sought adjournment by moving an
application to the direct that his another case is
pending for today itself in Tis Hazari Court
Delhi. In view of the grant mentioned in the
application, case is adjourned to 17.11.2010 for
cross examination of plaintiff and for remaining
evidence of plaintiff.*

*Sd/- VIMAL SAPRA
CJ/JD Faridabad 16.11.2010.”*

5. On 17.11.2010, there was no representation on behalf of the plaintiff. The suit was dismissed in default. An application was filed for restoration of the suit on the premise that the counsel did not inform the next date i.e. 17.11.2010 and the plaintiff could not attend the case.

6. Since the case was adjourned from 16.11.2010 to 17.11.2010, therefore, plaintiff could not ascertain about the next date i.e. 17.11.2010.

7. An application for restoration of the suit was filed on 08.12.2010 on the ground that the plaintiff came to know the order of dismissal of the suit in default only on 06.12.2010. The application was filed promptly.

8. The application was contested by the defendants and the same was dismissed by Civil Judge (Senior Division), Faridabad vide order dated 21.10.2013. An appeal was filed against the aforesaid order in the Court of Additional District Judge, Faridabad. The appeal has also been dismissed vide order dated 13.05.2015. That is, how the present revision petition came to be filed.

9. Record of the case would show that the suit for specific performance of agreement to sell was filed on 22.01.2007. Issues were framed vide order dated 10.08.2009. Thereafter, the case was adjourned for plaintiff evidence on number of occasions.

10. The case was adjourned for plaintiff's evidence on 12.11.2009, 11.02.2010, 02.04.2010 and 04.06.2010 but no witness was examined by the plaintiff till then and thereafter, last opportunity was granted to the plaintiff to lead evidence on

04.06.2010. Examination-in-chief of the plaintiff was recorded on 04.06.2010 and thereafter, cross-examination was deferred by the Court from time to time. The case was adjourned to 29.09.2010 for cross-examination of the plaintiff i.e. the date on which application for adjournment was filed by the plaintiff and the case was adjourned to 16.11.2010.

11. On 16.11.2010 also, the case was adjourned at the instance of the plaintiff to 17.11.2010 i.e. the next date. The said adjournment was granted on the premise that the counsel for the plaintiff had to go to Tis Hazari Court, Delhi. None appeared on 17.11.2010 and the Court had no alternative but to dismiss the suit in default.

12. Perusal of the record shows that there was some omission on the part of the plaintiff in pursuing the litigation in a bonafide manner, but seeing the order dated 16.11.2010 and 17.11.2010 and the filing of application for restoration of suit after a delay of 19 days, I deem it appropriate to restore the suit in the interest of justice, however subject to payment of cost(s) of Rs.20,000/- to be paid to the respondent-defendant.

13. Payment of cost(s) shall be the condition precedent for granting indulgence by the trial Court.

14. Both the parties are directed to appear before the trial Court on 01.05.2019.

15. The trial Court shall make every endeavor to decide the suit at the earliest by giving short adjournments.

05.04.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No