

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

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**CR No.4180 of 2017(O&M)
Date of Decision:4.2.2019**

ARUN KUMAR

.....Petitioner

Versus

NIRMAL SINGH AND ORS.

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.Amit Gupta, Advocate
for the petitioner.

Mr. Sunny Bhardwaj, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.(Oral)

This revision petition has been preferred against the order dated 3.5.2017 passed by the Additional District Judge, Patiala, vide which the application under Order 41 Rule 19 CPC filed by the petitioner-appellant for restoration of appeal to its original number was dismissed.

The appeal was dismissed for want of prosecution vide order dated 25.7.2011 by the Additional District Judge, Patiala when none appeared on behalf of the appellant. The application for restoration of the appeal was filed on 30.7.2011. In the said application, para Nos. 2 and 3 were to the following effect:-

“2. That on 25.7.2011 when the Hon'ble Court called

for the above mentioned case for hearing at that time counsel for the appellant was busy in recording evidence in the case titled as “Gurinder Singh vs. Balbir Singh” pending in the court of Sh.Kuljit Pal Singh, Addl.Civil Judge (Sr.Divn.), Patiala and due to said reason the counsel for the appellant could not come present before the Hon'ble Court when the above mentioned case was called for hearing.

3. That the absence of the appellant or his counsel on 25.7.2011 before the Hon'ble Court was neither intentional nor willful rather it was due to the reason that when the case was called for hearing at that time counsel for the appellant was busy in the court of Sh.Kuljit Pal Singh, Addl.Civil Judge (Sr.Divn.), Patiala as detailed above.”

The said application was dismissed by the Additional District Judge, Patiala on the ground that the appellant has taken contradictory stand in the application as well as in his cross-examination, wherein he stated that he came to the Court on the date fixed and when the appeal was dismissed in default, he noted down the date in his diary, but in the application filed by the appellant, he has averred that on 25.7.2011, he requested his counsel that due to personal reasons, he was not in a position to attend the court and asked his counsel to conduct the case. On the aforesaid contradiction, the impugned order came to be passed.

There was some omission on behalf of the appellant in the conduct of pending appeal before the lower Appellate

Court. The lower Appellate Court has commented upon the conduct of the appellant without appreciating the fact that his counsel was busy in the Court of Additional Civil Judge (Sr.Divn.), Patiala and that was the precise ground taken in para Nos. 2 and 3 of the application.

Keeping in view the overall situation, I deem it appropriate to restore the appeal before the Additional District Judge, Patiala as the filing of application on 30.7.2011 was not belated one. Even though the appellant has taken some contradictory stand on two occasions, still the fact remains that his counsel could not appear before the Additional District judge, Patiala on 25.7.2011 on account of his pre-occupation.

In the interest of justice, the impugned order is set aside. The appeal before the Additional District Judge, Patiala is ordered to be restored to its original number, however, subject to payment of cost(s) of Rs. 10,000/- to be paid to the respondent.

Payment of costs shall be the condition precedent for granting indulgence by the Appellate Court in the aforesaid context.

Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

February 04, 2019

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Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

