

CR-5926-2016 (O&M)

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

**CR-5926-2016 (O&M)
Date of decision : 03.05.2019**

Satbir and another

... Petitioners

Versus

Hari Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munfaid Khan, Advocate for the petitioners.

Mr. Vishwajeet Singh, Advocate for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the petitioners-plaintiffs for restoration of the suit dismissed in default on 15.10.2013, has been dismissed.

Mr. Munfaid Khan, learned counsel for the petitioners-plaintiffs submitted that the plaintiffs had filed the suit for declaration with consequential relief of permanent injunction and when the case was listed for plaintiffs' evidence, owing to non-appearance of the counsel, the suit was dismissed in default. The plaintiffs were not informed by the counsel about dismissal of the suit in default, and on acquiring the knowledge on 08.09.2015, immediately moved the application for restoration on 30.09.2015, but the same has erroneously been dismissed, being barred by law of limitation. The trial Court has neither framed the issue in the application nor afforded the opportunity to lead evidence qua acquisition of knowledge. No harm and prejudice would be caused to the defendants, in case, the suit is decided on merits.

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Per contra, Mr. Vishwajeet Singh, learned counsel for the respondents-defendants supported the impugned order and stated that the application should have been moved along with application seeking condonation of delay as the acquisition of knowledge on 08.09.2015 is a figment of imagination, thus, urges this Court for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book.

The dates, aforementioned, are not in dispute.

The point to be pondered upon is whether the acquisition of knowledge on 08.09.2015, was genuine or not. The trial Court, in my view, should have framed the issue and afforded the opportunity to lead evidence qua acquisition of knowledge, instead adopted the harsh approach. The technicalities should not come in the way of the parties for adjudication of the suit on merits. However, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to set aside the impugned order, under challenge and the application for restoration of the suit is allowed. The suit is ordered to be restored to its original number.

Resultantly, the present revision petition stands allowed, subject to the payment of costs of ₹5000/-, which shall be condition precedent.

03.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No