

CR-6588-2018 (O&M)

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

CR-6588-2018 (O&M)

Date of decision : 23.05.2019

Ramesh

... Petitioner

Versus

Nanu and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jainainder Saini, Advocate
for the petitioner.

None for respondent No.1.

Ms. Prabhjot Kaur, Advocate for
Mr. Jatin Hans, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 13.07.2018 (Annexure P-3), whereby the application for restoration of the appeal dismissed in default on 19.05.2015, has been dismissed.

Mr. Saini, learned counsel appearing on behalf of the petitioner submitted that the petitioner has filed the appeal against the judgment and decree dated 09.04.2012, whereby the suit of the plaintiff/petitioner has been dismissed. The appeal was fixed for 21.04.2015 for argument and on that day, the case was adjourned to 12.05.2015, but the counsel for the plaintiff had noted down the wrong date as 21.05.2015 in his dairy, but on the said date, the case was not found in the cause list. On 12.05.2015, the

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appeal was adjourned to 19.05.2015 and owing to non-appearance, the appeal was dismissed in default, vide order dated 19.05.2015. On acquiring the knowledge, the petitioner-plaintiff filed the application for restoration on 01.07.2015 i.e. within reasonable period. The absence of the counsel was neither intentional nor willful, but for the reasons explained in the application. The Court below should have restored the appeal by allowing the application and laid focus on adjudication of the *lis*.

There is no representation on behalf of respondent No.1 despite service.

Learned counsel for respondent No.2 supported the impugned order and submitted that the petitioner-plaintiff did not intentionally appear and rightly so, the appeal as well as the restoration application have been dismissed. There is no illegality and perversity in the impugned orders, thus, urges this Court for dismissal of the present revisions petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit. The impugned order, under challenge, reflects that the Court had been too hyper-technical in dismissing the application. It is not the case that petitioner was not interested in pursuing the matter. No person be made to suffer on account of lapse of counsel. Non-appearance cannot be fatal in the application for restoration filed under Order 41 Rule 19 CPC, as noticed in the impugned order. In my view, the Court below should not have been wasted the time for adjudication of the application for restoration, instead of laid focus on the merit of the matter. The restoration application was filed within reasonable period.

In view of such circumstances and in the interest of justice, the

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impugned order is set aside and the appeal is ordered to be restored to its original number.

Resultantly, the present revision petition stands allowed.

23.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**