

CR-7133-2015 (O&M)

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

CR-7133-2015 (O&M)

Date of decision : 18.01.2019

Suraj Bhan

... Petitioner

Versus

Prem Wati (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Monika Singh, Advocate for
Mr. Anil Kumar Gahlawat, Advocate
for the petitioner.

Mr. R.S. Hooda, Advocate
for respondent No.2.

Mr. Ashok Kumar Sharma, Advocate for
Mr. S.K. Sharma, Advocate
for respondent Nos.4 and 5.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 01.09.2015, whereby the application for restoration of the suit along with application for condonation of delay, has been dismissed.

The plaintiff-petitioner instituted the suit for declaration with consequential relief of permanent injunction, which was dismissed in default on 21.08.2009 and the application for restoration of the same is dated 20.02.2010, which was dismissed on 11.09.2012. The matter reached upto this Court and this Court, vide order dated 10.12.2013, granted the permission to the petitioner to withdraw the application, subject to the payment of costs of ₹2,000/- and to file afresh, by directing the parties to

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appear before the trial Court on 20.12.2013. However, fresh application without withdrawal of the previous application, was moved on 25.03.2014 and for condonation of delay on 07.02.2015, whereas the costs was paid, much before the application for condonation of delay i.e. on 06.12.2014.

Learned counsel for the petitioner submitted that though the petitioner had not been vigilant, but he was not properly advised as he did not know the intricacies of law. No harm and prejudice would be caused in case the suit is restored to its original number, subject to any terms and conditions, which this Court may deem fit appropriate.

Learned counsel for the respondents opposed the aforementioned prayer by reflecting the conduct of the petitioner, as indicated above and submitted that once the application was barred by law of limitation, it was obligatory upon the plaintiff to submit an application for condonation of delay. All this period, his previous application was dismissed and fresh one also is without condonation of delay, thus, urges this Court for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Ms. Monika Singh, for, the facts noticed above, *prima facie* established the lackadaisical approach in moving the application and not appearing on the date when the suit was dismissed in default, but the fact of the matter is that ordinary litigants do not know the intricacies or the rigors of the limitation. The Court below should not have laid focus to decide the application, instead restored the suit subject to any condition or costs. However, in order to prevent and miscarriage of justice, I deem it appropriate to set aside

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the impugned order, under challenge. Accordingly, the same is set aside aside and the revision petition stands allowed. The suit is restored to its original number, subject to the payment of costs of ₹10,000/-, which shall be condition precedent.

18.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**