

CR-8066-2017 (O&M)

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

CR-8066-2017 (O&M)
Date of decision : 27.03.2019

John Masih (deceased) through LRs

... Petitioner

Versus

Ribka Masih

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rahul Bhargawa, Advocate
for the petitioner.

Mr. Banni Thomas, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 07.08.2017, whereby the application for restoration of the suit, dismissed in default on 05.09.2016, has been dismissed.

Learned counsel for the petitioner submitted that the reason assigned by the Court below is that the correct address of the respondent-defendant was not filed. The defendant is now represented by the counsel before this court. Service is already effected. The absence was neither willful nor intentional as the talks of compromise were going on. Another reason was that perviously, the suit was also dismissed in default on 07.05.2012. The application for restoration was filed within the period of limitation on acquiring the knowledge, therefore, could not be said to be barred by law of limitation.

Learned counsel for the respondent-defendant opposed the application and stated that the lackadaisical approach of the plaintiff is writ

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large as this is not the first time, the suit was dismissed in default. A person cannot be unnecessarily dragged into the litigation for no fault, thus, urges this Court for dismissal of the present revision petition.

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 Mr. Bhargawa, for, the Court should not have adopted a harsh approach in dismissing the application seeking restoration of the suit, particularly, when it was disclosed that there were some talks of compromise. Obviously, the parties were not vigilant in pursuing the matter and some time, such eventuality occurs. Be that as it may, since the defendant had already served before this Court, the reason assigned by the trial Court is also taken care of. 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 seeking restoration of the suit is allowed. The suit is ordered to be restored to its original number.

The present revision petition stands allowed, subject to payment of costs of ₹5,000/-.

The parties or through counsel are directed to appear before the Court below on 22.04.2019.

27.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**