

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

Sr. No.114

C.R.No.1425 of 2019
Date of decision: 28.02.2019

Amar Singh

....Petitioner

versus

Rajpal

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. P.R. Yadav, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 03.12.2018 passed by the Civil Judge (Junior Division), Narnaul (for short – the Trial Court) restoring the respondent's suit which was dismissed in default on 20.04.2017 on account of his non-appearance.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein possession of land detailed and described in the head note of the plaint. On being put to notice, the petitioner, who was the defendant in the suit, appeared before the Trial Court and filed his written statement disputing the respondent's claim. Thereafter, the Trial Court framed issues and after sifting the evidence which had come on record through judgment and decree dated 18.02.2016 accepted the respondent's suit. The petitioner filed an appeal against such judgment and decree passed by the Trial Court in which the Appellate Court, after setting aside the judgment and decree

dated 18.02.2016 remanded the matter to the Trial Court with a direction to appoint a Local Commissioner to get the suit property as well as the property of the petitioner demarcated as per applicable rules and instructions. The Trial Court was further directed to adjudicate upon the respondent's suit afresh within two months. The Appellate Court directed the parties to appear before the Trial Court on 23.02.2017 on which date neither party appeared before the Trial Court. The Trial Court then issued notice to both the parties for 30.03.2017 on which date Mr. Vikash Yadav, Advocate, appeared on behalf of the petitioner. Notice issued to the respondent was received back with a report that his service remained inconclusive for want of complete address. Fresh notice was issued to the respondent for 07.04.2017 but such notice too was received back unserved. Another notice was issued to the respondent for 20.04.2017, which was not received back served or otherwise. Thereafter, the respondent's suit was dismissed in default. On coming to learn about the dismissal of his suit in default, the respondent filed an application seeking restoration of his suit, which has been allowed through the order impugned in the present proceedings.

Learned counsel for the petitioner assails the impugned order by submitting that the restoration application filed by the respondent was liable to be dismissed as the same was beyond the prescribed period of limitation of 30 days.

After remand of the matter by the Appellate Court, the Trial Court made three attempts to serve the respondent. Admittedly, such notices were never served upon the respondent. In spite of the same, the respondent's suit was dismissed in default. In the light of these facts, no

error is found in the order of the Trial Court restoring the respondent's suit.

The submission of learned counsel for the petitioner with regard to the respondent's restoration application beyond the prescribed period of limitation merits rejection in the light of the above facts that notices issued by the Trial Court to inform the respondent with regard to the pendency of the proceedings before it were never served upon him.

It is true that in the order of remand, the Appellate Court did fix a date for the parties to appear before the Trial Court. However, on the date fixed, since both parties failed to appear before the Trial Court, miscommunication between them and their counsel appearing for them before the Appellate Court cannot be ruled out and for that the right of the respondent cannot be prejudiced especially when after the respondent's suit was dismissed in default he acted with promptitude. Even otherwise, only for the afore reason, the impugned order cannot be set aside especially when its effect would merely result in the hearing and decision of the respondent's suit on merits.

Dismissed.

(DEEPAK SIBAL)
JUDGE

February 28, 2019

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No