

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3031 of 2019 (O&M)
Date of decision: 10.07.2019

Ralli (since deceased) through L.Rs.

...Petitioner

versus

Malhara Singh and others.

...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Durgesh Aggarwal, Advocate for the petitioner.

B.S. Walia, J.,

1. Civil Revision Petition has been filed under Article 227 of the Constitution of India challenging order dated 15.02.2007, passed by the learned Civil Judge (Junior Division), Chandigarh, dismissing the suit under Order 9 Rule 8 of the Code of Civil Procedure (hereinafter referred to as 'CPC'), order dated 11.07.2014, passed by the learned Civil Judge (Senior Division), Chandigarh, dismissing the application under Order 9 Rule 9 read with Section 151 CPC as well as order dated 22.11.2016, passed by the learned Addl. District Judge, Chandigarh, dismissing the appeal against order dated 11.07.2014, passed by the learned Civil Judge (Senior Division), Chandigarh, under Order 9 Rule 9 CPC.

2. Brief facts of the case leading to the filing of the revision petition are that petitioner-Ralli(since deceased) filed a civil suit through her son and attorney Sarja Singh s/o Atma Singh for a declaration etc. that she was owner in joint possession to the extent of 1/5th share of estate left by Ram Ditta i.e. land measuring 6 Kanals 17 Marlas, comprised in Khewat/Khatoni

No.200/250, Khasra Nos/26 (0-9), 15 (7-15), 16 (7-11), 16/11 (7-7), 10/24 (7-4) and 21/6 (3-18), kittas-6, total land measuring 34 kanals 4 marlas, situated in village Dadu Majra, UT Chandigarh.

3. It needs noticing here that earlier CR No.2450 of 2017 had been filed by the petitioner through her L.Rs. against the same impugned orders i.e. 15.02.2007, 11.07.2014 and 22.11.2016. The same was dismissed in default. Thereafter, CM Nos.25288-89-CII of 2018 in CR No.2450 of 2017 for restoration of the main case was filed, whereupon, following order was passed by this Court:-

“After arguing for some time, learned counsel for the applicants-petitioners prays for permission to withdraw the applications with liberty to the applicants-petitioners to take appropriate remedy available to them, in accordance with law.

Dismissed as withdrawn with liberty as prayed for.”

4. Learned counsel contends that the application for restoration of the civil revision dismissed in default was ordered to be withdrawn with liberty to the petitioner to take appropriate remedy available under the law, therefore, the present revision petition has been filed.

5. Learned counsel contends that the L.Rs. of the deceased petitioner were illiterate and not conversant with the intricacies of law, therefore, liberal approach ought to have been adopted in condoning the delay, that the Courts below had erred in holding that L.Rs. of the deceased petitioner had failed to make out a case of sufficient cause to show non-appearance of the petitioner/attorney on 15.02.2007, that Shri Vinod Kumar, Advocate had no authority on behalf of the petitioner-plaintiff to appear and make any statement on 15.02.2007, that the application ought to have been

allowed on the basis of equity and good conscience as it was settled law that no party should suffer unheard.

6. I have considered the submissions of learned counsel for the petitioner and perused the paper book.

7. Order dated 15.02.2007 is reproduced as under:-

Pre-lunch session:

Present : Shri Vinod Kumar, Advocate for the plaintiff.
Thakur Kartar Singh, counsel for defendant No.1, 3 to 10.

Affidavit of DW Janak Singh is placed on file, copy of which supplied to Shri Vinod Kumar, Advocate, who has appeared on behalf of plaintiff. Shri Vinod Kumar has no power of attorney in his favour. Earlier Shri Bhagwan Dass, used to appear on behalf of the plaintiff who has filed his power of attorney. He has not appeared today. Shri Vinod Kumar has stated that plaintiff is sitting in his chamber and he does not want to pursue the present suit. Learned counsel Shri Vinod Kumar was asked to call the plaintiff to either cross-examine the witness or to withdraw his suit. Let, the file be taken up after lunch session.

Post lunch session:

Present: None for the plaintiff.
Counsel for the defendants No.1, 3 to 10.
Suit qua defendant No.2 already dismissed.

File taken up again in after lunch session. Case called again and again. It is already 3 p.m. But none has appeared on behalf of plaintiff waited sufficiently. No more wait is justified, hence, this court is left with no other option but to dismiss the

present suit U/o 9 Rule 8 CPC. File be consigned to the records, after due compliance.

8. A perusal of the order which was passed during pre-lunch session reveals that the Court observed that Shri Bhagwan Dass, Advocate who used to appear on behalf of the plaintiff and who had filed power of attorney on behalf of the petitioner had not appeared instead Shri Vinod Kumar, Advocate had appeared and stated that the plaintiff was sitting in his chamber and did not want to pursue the suit, whereupon, Shri Vinod Kumar, Advocate was asked to send the plaintiff up after lunch to either cross-examine the witness or to withdraw the suit. However, in the post lunch session, none appeared on behalf of the plaintiff and while noticing that suit qua defendant No.2-Ajaib Singh i.e. respondent No.2 had already been dismissed in default and despite the case having been called out repeatedly, and it being 3 p.m., and none having appeared on behalf of the plaintiff, the civil suit was dismissed in default under order 9 Rule 8 CPC.

9. Thereafter, the petitioner filed an application under order 9 Rule 9 CPC read with Section 151 CPC on the ground that Shri Bhagwan Dass, Advocate, was not available on the said date, as such attorney of the petitioner plaintiff had requested Shri Vinod Kumar, Advocate to attend the proceedings but the applicant-plaintiff/Sarja Singh suddenly fell unwell in the Court premises and went back to his house at Sirhind and could not inform Shri Vinod Kumar, Advocate, when he left the court complex. The application was filed on 21.05.2008, whereas as has been noted above, the civil suit was dismissed on 15.02.2007. The aforementioned application was dismissed vide order dated 11.07.2014, on ground of delay. Appeal filed by the L.Rs. of deceased-

petitioner was dismissed by the learned Addl. District Judge, Chandigarh, vide order dated 22.11.2016.

10. Application under Order 9 Rule 9 read with Section 151 CPC for restoration of the civil suit was dismissed on the ground that the civil suit which was filed on 28.10.1998 was dismissed under Order 9 Rule 8 CPC on account of negligence on the part of the petitioner-Ralli/her attorney and after dismissal of the suit on 15.02.2007, the petitioner/plaintiff/L.R's. had not cared to move an application for restoration of the civil suit up till 21.05.2008 i.e. for a period of more than 1¼ years after the dismissal of the suit under Order 9 Rule 8 CPC nor had any plausible explanation been put forth to justify the delay in filing the application. Accordingly, in view of failure to make out sufficient cause for non-appearance by the plaintiff on 15.02.2007, when the suit was called for hearing, the application under Order 9 Rule 9 was dismissed. Likewise, appeal filed against aforesaid order was dismissed by the learned Addl. District Judge, Chandigarh vide order dated 22.11.2016.

11. Admittedly the case was fixed before the trial Court for 15.02.2007 on which date witness of the respondent-defendant was present in the pre-lunch session. The learned trial Court passed an order that Shri Vinod Kumar, Advocate had appeared on behalf of the plaintiff but was not having any power of attorney in his favour and stated that the plaintiff was sitting in his chamber and did not want to pursue the suit. However, the learned trial Court did not accept his statement and granted time to the plaintiff to appear in the post lunch session. However, on failure of either the counsel for the petitioner or the petitioner plaintiff to appear in the post lunch session, the suit was dismissed under Order 9 Rule 8 CPC. It was the duty of the petitioner-plaintiff to have put in appearance before the learned trial Court on the date

fixed or to ensure due representation through counsel but the petitioner failed to ensure the same. The absence of bonafide of the petitioner further stands established from the fact that the petitioner did not even bother to appear before the learned trial Court at any stage thereafter to seek restoration of the suit till the lapse of a period of 1¼ years. In fact it is the stand of the petitioner himself that he had asked Shri Vinod Kumar, Advocate to appear on his behalf. Consequently, in the circumstances on failure of the petitioner to appear in person or through counsel in the post lunch session, no fault can be found with the order passed by the learned trial Court on 15.02.2007 under order 9 rule 8 CPC. Apart from above, the absence of sufficient cause stands established from the fact that application for restoration of the suit was filed after delay of 1¼ years without giving any explanation for the delay in moving the application for restoration of the suit by mentioning that on 15.02.2007, GPA/son of the deceased petitioner had requested Shri Vinod Kumar, Advocate to attend the proceedings of the suit, however, during lunch time, he fell unwell and went back to his house at Sirhind, resulting in order dated 15.02.2007 being passed and it was only during the proceedings of mutation of village Dadu Majra, before the AC 1st Grade that he came to know regarding dismissal of the suit. Surprisingly, no date has been mentioned in the application or the supporting affidavit as regards the date of coming to know of the dismissal of the suit or as to on which date, the proceedings before the AC 1st Grade were taking place and order of dismissal of suit was produced. However, nothing of that sort was done for reasons best known to the petitioner. It has also not been explained as to why despite having been present on 15.02.2007, no steps were taken for a period of close to 1¼ years to ascertain the orders passed on 15.02.2007 or to move an

application for restoration within period of time permissible. Apparently, the application for restoration was hopelessly time barred and in the absence of sufficient cause having been proved, dismissal of the same does not warrant any interference.

12. Accordingly, impugned orders dated 15.02.2007, 11.07.2014 and 22.11.2016 are held to have been passed in accordance with law and not warranting any interference. Therefore, finding no merit in the revision petition, the same is dismissed in limine.

10.07.2019
rajesh.k.khurana

(B.S. Walia)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No