

207

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

**Civil Revision No.3496 of 2019 (O&M)
Date of Decision: 20.12.2019**

Sonu Mann

.....Petitioner

Vs

Fatehjang Singh Chahal and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Promila Nain, Advocate and
Ms. Harveen Mehta, Advocate
for the petitioner.

Mr. Harsh Manocha, Advocate
for respondent No.1.

Ms. Mehak Sawhney, Advocate
for respondents No.2 and 3.

Mr. Shaktipal Singh Mann, Advocate for
Mr. Amanpal Singh, Advocate
for respondent No.5.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of the orders dated 07.05.2019
and 19.11.2014 passed by the Civil Judge (Senior Division)
Jagraon.

[3]. Vide order dated 19.11.2014 passed by the Civil Judge
(Junior Division) Jagraon, the suit was dismissed in default
under Order 9 Rule 8 CPC for non-appearance of the plaintiff as

well as her counsel. Vide order dated 07.05.2019 passed by the Additional Civil Judge (Sr. Divn.) Jagraon, the application under Order 9 Rule 9 CPC for restoration of the civil suit was also dismissed. Both the said orders have been assailed in the present revision petition.

[4]. Perusal of the record would show that Civil Suit No.505 dated 20.09.2008 was filed by the plaintiffs for declaration to the effect that they are owners to the extent of 1/3rd composite share i.e. 1/6th share each of the suit property as mentioned in the plaint. The suit was registered on transfer on 29.05.2014 and the same was adjourned for 19.07.2014. On 19.07.2014, amended title to the suit was filed and the case was adjourned to 20.08.2014 for evidence of the plaintiffs at their own responsibilities. On 20.08.2014, the case was further adjourned to 05.09.2014 for the purpose already fixed because the Presiding Officer was on leave. On 05.09.2014, there was no evidence available on behalf of the plaintiffs and the case was further adjourned to 09.10.2014 for evidence of the plaintiffs at their own responsibilities.

[5]. Plaintiff No.1 Varinder Kaur was transposed as defendant vide order dated 13.03.2014 passed by the Civil Judge (Junior Division) Jagraon. Perusal of the file, brought this fact to the knowledge of the Court and, therefore, before

proceeding in the case, the Court thought it appropriate to issue notice to Varinder Kaur as defendant No.5 for 15.11.2014. On 15.11.2014, service upon defendant No.5 was not effected and the case was further adjourned to 19.11.2014. On 19.11.2014, when the case was fixed for service of defendant No.5, none appeared on behalf of the plaintiff. At about 3.55 p.m., the trial Court proceeded to dismiss the suit under Order 9 Rule 8 CPC vide the aforesaid impugned order.

[6]. Thereafter, the plaintiff filed an application under Order 9 Rule 9 CPC for restoration of the suit. An application under Section 5 of the Limitation Act was also filed for condonation of delay of 28 days, as the application under Order 9 Rule 9 CPC was filed after 58 days from the dismissal of the suit in default.

[7]. Petitioner pleaded in the application that she is a Senior Deputy Advocate General in the office of Advocate General, Punjab in the High Court. She was busy with her official work on 19.11.2014 and could not attend the case. Learned counsel for the plaintiff/petitioner namely Sh. A.K. Attraya had sustained fracture in his left iliac blade and remained hospitalized and bed ridden. The Advocate still uses walk-aid to walk and, therefore, he also could not appear in the case when it was called on 19.11.2014. With this background the application was filed along with prayer for condonation of delay. The application was

supported with an affidavit of the petitioner.

[8]. The application was opposed by respondent No.1. The trial Court framed the necessary issues in the context of sufficiency of grounds for restoration of the suit. The petitioner sought restoration of the suit on the following grounds:-

- “a) The absence of the applicant and her counsel on the last date of hearing i.e. 19.11.2014 was not intentional or willful, but was rather for the reasons stated in para no.2 above.*
- b) It is in the interests of justice to restore the suit and to proceed further with the trial of the case from the same stage as at which it was pending at the time of dismissed in default.*
- c) The plaintiff/applicant learnt about the order of the dismissal of the suit only one day prior to filing the present application, when she inquired about the status of the case from her counsel, who has himself was not aware of the order of dismissal of the suit and after going through the case diary he found that the suit had been dismissed in default under Order 9 Rule 8 CPC on 19.11.2014 and accordingly, apprised the applicant/plaintiff regarding the dismissal order.*
- d) As such, the instant application under Order 9 Rule 9 CPC for restoration of the suit is within time from the date of knowledge of the dismissal order. However, in case any delay having been found in filing the instant application, the delay deserves to be condoned for which a separate application under Section 5 of the Limitation Act is*

being filed along-with this application.”

[9]. Respondents No.2 to 4 were proceeded against ex parte vide order dated 18.07.2016. Respondent No.1 contested the application thereby admitting that the petitioner is working as Deputy Advocate General in the Office of Advocate General, Punjab. It was alleged that she was not busy on the date of hearing, therefore, she could have attended the Court in-person. Respondent No.1 further asserted that in fact, the plaintiff/petitioner herself got the case dismissed in default as she got the plaintiff No.1 Varinder Kaur transposed as defendant without her consent by alleging incorrect facts. It was admitted that learned counsel for the plaintiff had sustained fracture, but at the same time submitted that on the date fixed, the learned counsel had started attending the Court by using walk-aid to walk. The counsel had juniors with him and on that day also he had many cases fixed for hearing and no other case was dismissed in default. Since the applicant was having knowledge of the date of hearing, therefore, there was no sufficient ground to condone the delay and to restore the suit.

[10]. The trial Court on the basis of pleadings of the parties, framed the following issues:-

- “1. *Whether the suit of the applicant be restored as prayed for? OPA*
2. *Whether the present application is not maintainable?*

OPR

3. *Relief.*"

[11]. The petitioner appeared as PW-1 and stated her version on affidavit Ex.PA. She repeated her stand in the evidence. She also proved on record the copy of duty roster dated 19.11.2014 as Ex.P-1, showing her pre-occupation in the High Court. Per contra, respondent No.1 appeared as RW-1 and deposed on the basis of his affidavit Ex.RW-1/A. The witness repeated the same stand in his evidence. The evidence was closed thereafter.

[12]. The trial Court dismissed the application vide order dated 07.05.2019 on the ground that the limitation for filing the application for restoration of the suit is of 30 days. The application was filed after 58 days from the date of dismissal of the suit, therefore, the same was barred by 28 days. The petitioner herself is a lawyer and she was not expected to be ignorant about law of limitation. On that premise, the application was dismissed.

[13]. I have considered the submissions made by learned counsel for the parties.

[14]. Petitioner is an Advocate and she is a litigant in the court of law. Admittedly, the counsel for the petitioner had sustained fracture in his left iliac blade and was hospitalized. The counsel remained bed ridden and thereafter he started his

pursuit only with the help of walk-aid. Dismissal of the application under Order 9 Rule 9 CPC bars institution of fresh suit. If the application itself contains sufficiency of reasons for condonation of delay, then there is no necessity even to file an application under Section 5 of the Limitation Act. If the application itself has all the ingredients of application for condonation of delay, then the sufficiency of cause for not appearing in the suit on the date fixed has to be appreciated by the Court.

[15]. In **Bhagmal and others vs. Kunwal Lal and others, Vol.CLX(2010-4) The Punjab Law Reporter 267**, the aforesaid proposition was highlighted and it was held that the delay is not such which would impede the cause of justice to be decided on merits. In **Rattan Chand vs. State of Punjab & Ors., 2007(1) HRR 116**, the aforesaid proposition was reiterated by the High Court and it was held that no separate application is required to be moved when the delay is fully explained in the main grounds.

[16]. In the instant case, no such proposition is even attracted because a proper application was filed for condonation of delay in filing the application for restoration of the suit.

[17]. In **Kamla Bai vs. Harishankar Arora and others, 2010(15) SCC 454; Raj Kishore Pandey vs. State of U.P. & ors, 2009(4) R.C.R. (Civil) 673; Municipal Corporation,**

Jalandhar vs. Smt. Phool Kaur and others, 1991(2) R.R.R.

235 and Jagan Nath vs. Parshotam Dass, 2014(56) R.C.R.

(Civil) 155, it was held that the Court is required to look into the facts and circumstances of the case and the approach of the Court should be to advance the cause of justice and not the cause of technicalities. Consideration of existence of sufficiency cause is within the discretionary ambit of the Court and the same should be exercised on sound principles.

[18]. Admittedly, the factum of fracture on the person of the counsel for the plaintiff/petitioner is not denied on record. The impugned order was passed when the case was fixed for the service of defendant No.5. The case was not for any substantial cause except to secure the presence of defendant No.5, who on appearance would have asked for date for filing written statement. Even otherwise, when cause of justice is pitted against the technicality, the cause of justice should prevail, particularly in view of the fact that rigour of Order 9 Rule 8 CPC would debar the plaintiff from instituting a fresh suit on the same cause of action. The trial Court ought to have exercised judicial discretion in favour of the plaintiff/petitioner by condoning the delay and restoring the suit.

[19]. It is relevant to note here that, learned counsel for respondents No.2, 3 and 5 have no objection for acceptance of

the present revision petition and for restoration of the suit.

[20]. For the reasons recorded hereinabove, I deem it appropriate to accept the present revision petition. Consequently, the impugned orders dated 07.05.2019 and 19.11.2014 passed by the Civil Judge (Senior Division) Jagraon are hereby set aside and suit of the plaintiff is ordered to be restored by condoning the delay of 28 days in filing the application under Order 9 Rule 9 CPC. Normal consequences to follow.

December 20, 2019

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Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No