

CR No.3616 of 2019

Date of Decision:18.07.2019

NEELAM BIMAL

...Petitioner

Versus

S. K. CHOHAN

..Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Promila Nain, Advocate
for the petitioner.

Mr. Sudhir Aggarwal, Advocate
for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 01.05.2019 passed by the Additional District Judge, Gurugram (for short-the Appellate Court), dismissing an application filed by the petitioner seeking restoration of her appeal on the ground that the same had been filed beyond the prescribed period of limitation.

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 ejectment of the petitioner from the first floor of House No.789, Sector-17A, Gurugaon (for short-the suit property). Such ejectment was sought on the ground that the petitioner was in arrears of rent.

On being put to notice, the petitioner, who was the defendant in the suit, appeared before the Trial Court and filed her written statement. However, no evidence was led by her. On 03.04.2018, she absented herself

from the Court proceedings and therefore, was proceeded against *ex parte*.

On the same day, the respondent's suit was decreed.

The petitioner challenged the aforesaid *ex parte* decree through an appeal filed by her before the Appellate Court. Such appeal was filed within the prescribed period of limitation.

However, on 21.08.2018 neither the petitioner nor her counsel appeared before the Appellate Court and accordingly her appeal was dismissed for non prosecution. On 21.11.2018, an application was filed by the petitioner for restoration of her appeal primarily on the ground that on 09.07.2018, her counsel wrongly noted the date of hearing as 21.11.2018 instead of 21.08.2018. The Appellate Court considered and rejected the petitioner's restoration application through the order which is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

On 03.04.2018, the Trial Court decreed the respondent's suit through which the petitioner was ordered to be evicted from the suit property. Against the aforesaid decree, within the prescribed period of limitation, an appeal was preferred by the petitioner. However, on 21.08.2018, the same was dismissed for non prosecution. Through an application filed by the petitioner on 21.11.2018 she sought restoration of her appeal on the ground that on 09.07.2018, her counsel had noted the next date of hearing as 21.11.2018 instead of 21.08.2018 resulting in dismissal of her appeal in default.

After considering the explanation given by the petitioner and the fact that the restoration application was filed by her just after three

months from the date of dismissal of her appeal as also for the reason that the petitioner may not be precluded from seeking the decision of her appeal on its merits, subject to payment of ₹10,000/- as costs to be paid by her to the respondent, the impugned order is set aside and the Appellate Court is directed to decide the petitioner's appeal on merits within one month from the date of the receipt of a certified copy of this Court.

The Trial Court shall ensure that the costs awarded through the present order are transferred into the account of the respondent.

The petition is allowed in the above terms.

(DEEPAK SIBAL)

JUDGE

July 18, 2019

Whether speaking/reasoned Yes/No Whether Reportable Yes/No

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