

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

C.R. No. 3755 of 2019 (O&M)

DATE OF DECISION :- November 26, 2019

Garja Singh (deceased) through his LR's

...Petitioners

Versus

Gurmeet Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADHAN

Present:- Ms. Sumati Jund, Advocate for the petitioners.

Briefly stated the facts of the case are that Garja Singh had filed a suit for declaration and permanent injunction against defendant Gurmeet Singh on 20.4.2006. That suit was dismissed in default on 25.2.2008. An application was filed by the plaintiff for restoration of the suit on 6.4.2017. Notice of that application was given to defendants respondents who put in appearance, opposed the application. Issues on merits were framed. The parties were given opportunities to lead evidence. After hearing the arguments, the trial Court dismissed the application vide detailed order dated 23.8.2018.

The order left the plaintiff aggrieved and his legal heirs have approached this Court by way of filing revision petition challenging that order praying that the same be set aside, application for restoration of the suit dismissed in default be accepted and the suit be restored at its original

number.

I have learned counsel for the petitioners besides going through the record.

The trial Court has disposed of the application by giving detailed reasoning. The relevant para Nos. 13, 14 and 15 are reproduced for ready reference :-

“13. In the present application, applicant has taken plea that his counsel misguided him and he was informed by his counsel being civil suit there was no need to appear the applicant in the Court. Perusal of case file shows that as per certified copy of order dated 22.1.2008 on record when case was fixed for 25.2.2008 for filing of Court fee and on account of non appearance of any person on behalf of plaintiff case was dismissed in default on 25.2.2008. In the present case, the respondents have taken the objection of limitation. Perusal of file goes to show that present application was filed on 28.4.2017 i.e. After period of about nine years from the date of dismissal in default of civil suit on 25.2.2008. The application is filed beyond period of limitation. Since the main case was fixed for filing of Court fee, it support the version of respondents that applicant intentionally and willfully not appeared in the main suit and as he has not filed the proper court fee and did not file the application for a long period, he estopped by his own act and conduct from filing the present application. Hence, plea taken by the applicant that his counsel misguided and he came to knowledge about dismissal for the case on 6.4.2017 is not believable as no prudent man will remain silent or misguided by any person for period of about nine years about fate of this case. Hence, this Court is of the view that present application being barred by limitation is not maintainable and applicant is not entitled to get restored the

suit dismissed in default on 25.2.2008 and he is estopped by his own act and conduct from filing the present application.

14. Accordingly, all the issues No. 1 to 4 are decided against the applicant and in favour of respondents.

15. In view of the findings on issues NO. 1 to 4, this Court finds no merits in the present application and same is hereby dismissed with no orders as to costs. File be consigned to record room.”

The order is quite detailed one. It does not suffer from any illegality or any infirmity. The order is certainly not perverse. The applicant-plaintiff could not render any satisfactory explanation for the gross delay in approaching the Court seeking restoration of the suit dismissed in default on 25.2.2008 at the stage of filing of Court fee. Therefore, the application was rightly dismissed.

There is no ground to interfere with the order while exercising the revisional jurisdiction. The revision petition being without any merit stands dismissed.

(H.S. MADAN)
JUDGE

November 26, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No