

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4587 of 2019(O&M)
Date of Decision: 29.10.2019

Hari Singh

.....Petitioner

Versus

Rattan Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.S. Gulati, Advocate for
Mr. S.S. Grewal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 15.05.2013 passed by Civil Judge (Senior Division), Pathankot, vide which the suit was dismissed in default, order dated 18.05.2016 passed by Civil Judge (Senior Division), Pathankot, vide which the application for restoration of the suit was dismissed in default and order dated 23.04.2019 passed by Civil Judge (Senior Division), Pathankot, whereby application for restoration of the application for restoration of the civil suit was dismissed.

[2]. Vide order dated 24.07.2019, learned counsel for the

petitioner sought time to clarify whether the order dated 18.05.2016 passed by Civil Judge (Senior Division), Pathankot was passed in the context of dismissing the application for restoration of the suit or the suit itself. The said order was not complied with and this Court vide order dated 19.09.2019, granted last opportunity to the learned counsel for the petitioner to do the needful in the context of order dated 24.07.2019.

[3]. Today, none appeared on three calls given before lunch. After lunch, Mr. A.S. Gulati, Advocate appeared on behalf of the petitioner. Since last opportunity was granted to the learned counsel for the petitioner on 19.09.2019, therefore, further adjournment in the case is not found to be feasible anymore.

[4]. With the assistance of the learned counsel for the petitioner, I have gone through the material on record.

[5]. Perusal of the record would show that vide order dated 15.05.2013, the suit was dismissed in default when learned counsel for defendants No.1 and 2 appeared, but none appeared on behalf of the plaintiff. The said order has to be treated under Order 9 Rule 8 CPC. An application for restoration of the civil suit was filed. No date is appearing on the application, but perusal of subsequent order would show that application was filed on 16.05.2016. On 18.05.2016, none

appeared on behalf of the plaintiff and the trial Court dismissed the application for restoration of the suit in default.

[6]. Perusal of the said order would show that the suit was dismissed in default. Precisely, for that clarification, number of adjournments were granted to know whether application for restoration of the suit was dismissed or the suit was again dismissed for non-prosecution after dismissal of the same on 15.05.2013.

[7]. Since 15.05.2013, the suit was never restored, therefore, it can be taken that vide order dated 18.05.2016, the application for restoration of the suit was dismissed in default. An application for restoration of the application filed for restoration of the suit was preferred on 28.03.2017. The aforesaid application was filed beyond limitation i.e. after a period of 10 months from the date of order dated 18.05.2016.

[8]. Perusal of the record would show that vide order dated 16.05.2015, the respondent was ordered to be served through substituted process by depositing *munadi* fee. The petitioner did not comply with the order despite eight effective opportunities granted for that purpose. Vide order dated 07.04.2016, the petitioner was even burdened with costs of Rs.200/- for delaying the proceedings. Finally, the petitioner absented from the trial Court on 18.05.2016. In the application for restoration, the

petitioner has pleaded that the plaintiff was bed-ridden and his attorney was looking after the suit/case. The ground for non-appearance of the plaintiff and his counsel did not sound good. Petitioner has showed very pathetic attitude since beginning of the case. After dismissal of the application for restoration of the suit on 18.05.2016, an application was filed for restoration of the application for restoration of the suit after a period of more than 10 months. On earlier occasion, despite granting eight effective opportunities for depositing *munadi* fee and even despite imposition of costs of Rs.200/- for delaying the process, the petitioner did not comply with the order.

[9]. Owing to the aforesaid fact, the petitioner and his counsel intentionally did not appear on 18.05.2016 and the story as coined by the petitioner in respect of health of the plaintiff did not sound good before the trial Court.

[10]. Owing to the conduct of the petitioner, I see no reasons to interfere in the impugned orders passed by the trial Court. This revision petition is accordingly dismissed.

29.10.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No