

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

**CR No.5086 of 2019(O&M)
Date of Decision: 27.08.2019**

Pawan Kumar

.....Petitioner

Versus

Surender Singh @ Sunder Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. P.R. Yadav, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 20.05.2014 passed by Civil Judge (Senior Division), Gurgaon vide which application for restoration of the suit was dismissed and order dated 02.02.2019 passed by Additional District Judge, Gurugram, whereby appeal filed by the petitioner was dismissed.

[2]. In pith and substance, the grievance of the petitioner revolves around restoration of the suit dismissed in default on 17.08.2012 due to non-appearance of learned counsel for the petitioner.

[3]. Perusal of the record would show that a suit for specific performance was filed by the plaintiff in the year 2006. Defendants appeared in the Court and filed their written statement. For the first time, the suit was dismissed in default on 26.11.2008. On filing application for restoration, the suit was restored vide order dated 23.12.2008. Again the suit was dismissed in default on 06.01.2011. Plaintiff again filed an application for restoration of the suit and the same was allowed and the suit was restored. On third occasion, the suit was again dismissed in default on 17.08.2012 and the plaintiff sought to get the suit restored by filing an application.

[4]. Trial Court has noticed the fact that since the very inception when the suit was dismissed in default on first occasion, the stage of the suit was for filing replication. Plaintiff delayed the proceedings and did not file replication on all the three occasions. Defendants have taken a stand that the plaintiff intended to prolong the proceedings as he did not have funds to meet the obligation arising out of the agreement.

[5]. Perusal of the findings recorded by the trial Court would also show that after filing the written statement, the case was adjourned to 26.11.2008 for filing replication. On 26.11.2008, none appeared on behalf of the plaintiff and the suit was dismissed in default and the same was restored. After second

dismissal in default and restoration thereof, the case was still pending for filing replication. Replication was not filed during the currency of proceedings between the stages of first dismissal in default and second dismissal in default and the case was fixed for filing replication for 20.07.2010, 22.09.2010, 10.12.2010 and 06.01.2011 i.e. the date on which the suit was again dismissed in default. On second occasion, the case was restored vide order dated 22.04.2011. Even no replication was filed thereafter. The record of the suit was received by the trial Court on 22.12.2011 and thereafter, it was adjourned to 23.02.2012, 07.05.2012, 24.07.2012 and 17.08.2012 only for the purpose of filing replication. On 17.08.2012, none appeared on behalf of the plaintiff and the suit was dismissed in default on third occasion.

[6]. The conduct of the plaintiff is highly deprecable. Replication has not been filed even after expiry of 13 years of filing of the suit. After dismissal of the suit in default on third occasion on 17.08.2012, the application for restoration of the suit was filed beyond period of 30 days.

[7]. Overall conduct of the plaintiff is not such which would compel the Court to take any lenient view in this case. It appears that the plaintiff has lost track of the case and is interested to fight luxury litigation at his own whims and fancies.

[8]. Finding no merit in this revision petition, the same is accordingly dismissed.

27.08.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No