

CR-302-2017 (O&M)

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

CR-302-2017 (O&M)
Date of decision : 01.05.2019

Kandhara Singh and others

... Petitioners

Versus

Dalip Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Bhatia, Advocate
for the petitioners.

Mr. Navmohit Singh, Advocate
for respondent Nos.1 and 2.

AMIT RAWAL, J. (ORAL)

The short point involved in the present revision petition is whether the suit dismissed in default on 16.12.2010, an application moved in the month of March 2011, after framing of the issues, can be restored or not? The answer would be 'Yes'.

The petitioners-plaintiffs filed the suit for declaration with consequential relief of permanent injunction, in respect of land measuring 83 kanals, to be joint of the parties to the suit and various other reliefs. The suit was contested by the defendants by filing the written statement (Annexure P-2). After framing of the issues, the case was listed for plaintiffs' evidence on 06.12.2010 and thereafter, adjourned to 16.12.2010. On that date, owing to non-appearance of the counsel for the plaintiffs, the suit was dismissed in default. The absence of the counsel was neither willful

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nor intentional. Non-appearance of the counsel cannot be a ground for dismissal of the suit in default. At the best, the Court below could have issued the notice to the plaintiffs as the matter was slated for plaintiffs' evidence, thus, urges this Court for setting aside the impugned order, under challenge.

On the other hand, Mr. Navmohit Singh, learned counsel appearing on behalf of respondent Nos.1 & 2/defendants submitted that the act and conduct of the petitioner is writ large. They did not lead evidence despite number of opportunities. Even, diary brought on record did not reveal that they had wrongly noted the date, thus, urges this Court for dismissal of the present revision petition with exemplary costs by affirming the impugned order, under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the Court below should not have adopted harsh approach, rather framed the issues as the application for restoration of the suit was submitted, in the month of March 2011 i.e. immediately after three months of dismissal. The said application has been decided in August 2014 and by this time, the suit may have reached at the last stage, but the defendants insisted for framing of the issues. Non-appearance of the counsel, cannot be a ground for dismissal of the suit in default as owing to the busy schedule, the Court below ought to have adjourned the matter by seeing the past conduct and should have resorted to such proceedings. No such observations are reflected from the impugned order. The technicalities should not come in the way of the parties for adjudication of the suit on merits. However, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to set aside the impugned order, under

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challenge and the application for restoration of the suit is allowed. The suit is ordered to be restored to its original number.

Resultantly, the present revision petition stands allowed, subject to the payment of costs of ₹5000/-, which shall be condition precedent.

01.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**