

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 28.01.2020****CR No.587 of 2020 (O&M)**

Sunil Kumar

...Petitioner

Vs.

Mohinder Pal & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rohit Singla, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 16.11.2019 passed by the Civil Judge (Junior Division), Bathinda allowing the application for restoration of suit, which was dismissed in default on 05.07.2018.

2. It is argued by Mr. Singla for the petitioning defendant No.2 that the suit was dismissed twice in default earlier and in the 3rd attempt the plaintiff has succeeded to secure an order even when the application was time barred as it was filed beyond the period of limitation prescribed in Article 122 of the Limitation Act, 1963. He submits that there has been a delay of 38 days in presenting the application and hence it should have been dismissed, but that delay has been ignored by the trial court and no specific finding has been recorded regarding it, in the impugned order.

3. The dispute, on facts, is among the relatives in a suit for permanent injunction and for declaration that the property in the hands of Mani Singh (deceased) was ancestral property, while the defendants wish to

assert that it was self-acquired property. This is a matter for trial and no comment is made at this stage as to the nature of the suit property.

4. Defendant No.4/respondent No.4 is the wife of deceased Mani Ram. She suffered a statement in the trial court to the effect that she had no objection if the application for restoration was allowed. This is a pious decision taken by the wife of the deceased, whose land is involved in a matter involving a dispute of rights in immoveable property, in which she too has a right. Respondent No.2 (defendant No.1) is the son of deceased Mani Ram. He too has filed a reply to the application raising legal objections that the application was not verified nor supported by an affidavit.

5. The trial Court may not have spent time on the plea of limitation to analyze it, but he has considered the overall impact on a suit dismissed in default of appearance and the effect it may have on the rights of the contesting defendants. The trial Court has instead gone by the cardinal principle of natural law that no party should go unheard. Civil suits involving property rights of family members deserve to be decided on merits, so that no dispute/s remain between the warring sides and a decision is rendered on the merits of the case by settling all the disputed issues between the parties arising from the pleadings.

6. In exercise of power of superintendence, this Court has to examine three broad issues; viz (i) that there is no material irregularity in the order; (ii) that the trial court has failed to exercise jurisdiction vested in it; and (iii) that it has exercised jurisdiction beyond its jurisdiction. None of these infirmities has the trial Judge committed and he has kept himself within his bounds of jurisdiction in exercise of his discretionary and lawful powers. Where the trial Judge applies discretionary powers and has

exercised it judiciously, then this Court in superintendence will not upset that exercise of discretion vested in a court of law. In matters of cases being dismissed in default, the matter is more between the court and the litigant/s and conduct of parties prosecuting diligently their respective cases. An order dismissing case in default is itself an exercise of discretion, but in the confines of the Code of Civil Procedure. The trial court is the court closest to facts and a keen watcher of the demeanour of parties and their procrastination. There is no gainsaying that the court passed an order, but the court has taken it away and restored parties to the contested position in order to do substantial justice.

7. A perusal of the order reveals that the application has been allowed subject to costs of Rs.500/- to be deposited with free legal aid fund and the suit has been ordered to be restored to its original suit number, but despite this, that costs ought not to have been directed to be deposited in the legal aid fund and should have gone to the defendant/s for the absence of counsel for the opposite party on two occasions which has delayed the matter so as to compensate the contesting defendants for the lost time. Cost of Rs.500/- as a condition of recall of order, in the present context and time is flea bite compensation and deserves to be substantially enhanced. But, on the other hand, I would not put the plaintiff/respondent No.1 to notice to add to his expense, time and energy to compel him to put in appearance in this court to defend the case, when the result is already known, whether the plaintiff appeared or not on earlier occasions. At the same time, I do not wish to applaud the plaintiff for his slackness and casual approach to his own case.

8. Accordingly, in order to meet the ends of justice and to reasonably compensate the defendants, I enhance costs suo motu to Rs.5000/- to be paid by the plaintiff/respondent No.1 to the contesting defendants on the next date of hearing fixed before the trial Court or any date found suitable by the trial Judge.

9. With these observations and directions, the instant petition stands disposed of. The impugned order is upheld, but stands modified by enhancing costs.

28.01.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No