

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

C. R NO. 1032 OF 2021

DATE OF DECISION : 04.05.2021

Malkit Singh

...Petitioner

Versus

Balwinder Singh (now deceased) and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sham Lal Bhalla, Advocate,
for the petitioner.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Petitioner herein is aggrieved against an order dated 11.02.2021 (Annexure P-9) passed by learned Additional District Judge, Ludhiana, vide which trial Court order dated 31.01.2017 (Annexure P-8) passed by Civil Judge (Junior Division), Ludhiana, has been upheld, resulting in dismissal of the civil suit instituted by the petitioner due to default in his counsel's appearance on 13.05.2011.

2. Learned counsel for the petitioner strenuously argues that default in appearance on the particular date was not at all intentional. In any case, the same took place due to an inadvertent mistake on the part of learned counsel for the plaintiff, as he had mixed up the noting of next date of the suit in question with another case.

3. Learned counsel further points out that the petitioner would be put to an irreparable financial loss, apart from being seriously prejudiced for

not being able to pursue his remedy in case the civil suit is not restored. He submits that the civil suit was filed for seeking possession of the suit property as well as specific performance of agreement to sell whereby the defendant/respondents has already received a hefty sum of Rs.50.00 lacs as earnest money, as reflected from Annexure P-1.

4. Learned counsel submits that court fee of Rs.2,31,200/- was also paid by the plaintiff as per the pecuniary value of the suit which was assessed as Rs.2,34,47,500/-. After the service of suit was affected, it was fixed for filing of written statement/reply by the defendants. However, on the fateful day i.e 13.05.2011, when learned counsel representing the plaintiff in the trial Court could not appear before the Court and the suit was Dismissed in Default under Order 9 Rule 8 CPC.

5. On a Court query, learned counsel for the petitioner submits that the petitioner was also wrongly notified the slated date of hearing before the trial Court as 26.09.2011 by his counsel, instead of 13.05.211. The said mistake was not deliberate and arose out of learned counsel for the plaintiff himself having noted the same wrongly in his diary.

6. Learned counsel further submits that plaintiff had filed his duly sworn affidavit that his counsel (in the trial Court) had informed him of the wrong date i.e 26.09.2011 instead of 13.05.2011. Notwithstanding, an application seeking restoration of the suit was dismissed by the trial Court, inter alia, stating that the main suit itself seems to be barred by limitation and therefore, there was no merit in the application for restoration which too was also *prima-facie* held to be barred by limitation having been filed beyond 30 days from the date of passing of the impugned order by the trial Court. He submits that it is a settled position in law that 30 days are to be

reckoned with effect from the date of knowledge of the order of dismissal in default. He further submits that the impugned order of trial Court dismissing the suit in default came to the knowledge of the petitioner on 28.10.2011, when he contacted his counsel representing him in the trial Court with regard to further steps to be taken in the suit in the event written statement to the same had been filed. However, much to the chagrin of the petitioner it was discovered that the suit has been dismissed in default due to wrong noting of the date and it was thereafter an application for restoration was filed within 30 days thereof.

7. Having heard arguments of learned counsel for the petitioner, I am of the view that aforementioned arguments merit acceptance. An over pedantic approach was adopted by the trial Court. The said hyper technical view of the trial Court has been wrongly upheld by the Appellate Court below. A serious prejudice would indeed be caused to the petitioner in case the order under challenge is not set-aside. While on the other hand, the respondents will not be prejudiced in case the suit is restored to its original position, as the same is at very preliminary stage, wherein the pleadings are also yet to be completed. The bona fides of the petitioner are borne out from the fact that he had deposited heavy court fee and had been diligently following up with his counsel. The suit, in any case, has not been dismissed on account of his default and it was the learned counsel who ought to have diligently attended the same. Default, if any, is thus attributable to his learned counsel, though a case of human inadvertence and not a deliberate mistake. The said default of learned counsel for the plaintiff/petitioner has been justified by giving cogent reasons.

8. In the premise, I do not consider it necessary to even issue notice to the respondents/defendants.

9. In view of the reasons stated in the petition and my aforesaid observations, the instant revision petition is allowed. Both the impugned orders dated 11.02.2021 (Annexure P-9) passed by learned Additional District Judge, Ludhiana and trial Court order dated 31.01.2017 (Annexure P-8) passed by Civil Judge (Junior Division), Ludhiana, are set-aside, The civil suit is ordered to be restored to its original number/position, to be tried by the Court in accordance with law from the stage when it was dismissed in default, subject to payment of Rs.25,000/- as costs.

MAY 04, 2021

shalini

(ARUN MONGA)

JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No