

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

CR-1607 of 2021 (O&M)

Date of decision: 18.08.2021

Baljit Singh Grewal and others

...Petitioners

Versus

Gurjit Singh and another

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Anmol Puri, Advocate for the petitioners.

**H.S. MADAAN, J. (Oral)**

Case taken up through video conferencing.

This revision petition is directed against order dated 24.09.2019 passed by Civil Judge (Jr. Divn.) Ludhiana, vide which he had dismissed two applications filed by plaintiffs Baljit Singh Grewal, Amarjit Singh and Gurmit Singh Grewal through their respective attorneys, one under Section 5 of the Limitation Act for condonation of delay in filing application for restoration and another for restoration of suit dismissed in default on 22.11.2016.

According to the plaintiffs, they are Non-Resident Indians, having their residence in Canada; all of them are senior citizens; Baljit Singh Grewal being aged about 78 years, Amarjit Singh being aged about 82 years and Gurmit Singh Grewal aged about 66 years; plaintiffs No.2 and 3 had executed a power of attorney in favour of plaintiff No.1 to appear in the civil suit filed by them; their previous counsel had told them that there was no necessity of their putting in appearance in the Court and

as and when the need arose, he would inform them accordingly; however, the suit was dismissed in default on 22.11.2016 but the plaintiffs were not aware of the same; they came to know about such order on 14.03.2018, when plaintiff No.1 visited India and on not receiving any satisfactory reply from his counsel, he had engaged another counsel, who after enquiry informed him about dismissal of the suit; according to the plaintiffs, their absence was not intentional and willful.

Notice of both the applications was given to the respondents who were duly served but they did not put in appearance.

After hearing learned counsel for the plaintiffs/applicants, the trial Court vide impugned order dated 24.09.2019 had dismissed the applications, feeling aggrieved by which the plaintiffs have approached this Court by way of filing the present revision petition. Since the respondents had been proceeded against ex parte in the trial Court, therefore, issuance of notice to them is dispensed with.

I have heard learned counsel for the revisionists besides going through the record.

A perusal of the impugned order passed by Civil Judge (Jr. Divn.) Ludhiana goes to show that he has adopted hyper-technical approach while dismissing the applications. The rules of procedure provisions of law are meant to advance ends of justice. The Courts while dealing with such like matters should endeavour to see that a *lis* is decided on merits rather than non-suiting a party on technical grounds. If a litigant is grossly negligent and casual in his approach with regard to the litigation in which he is involved, then he does not deserve any

sympathy or leniency for the default committed by him with regard to putting in appearance in the Court. However, if sufficient reasons are given for non-appearance, then a very rigid and technical view in the matter should not be taken. In the present case, all the plaintiffs are Non-Resident Indians and are of very old age. They have rendered a plausible and satisfactory explanation for their non representation in the Court, when the case was dismissed for non-prosecution. Therefore, the trial Court should have considered the prayer of the plaintiffs to get the suit restored by condoning the delay in filing of the application sympathetically. Their claim ought to be adjudicated on merits rather than being rejected for technical reasons.

Therefore, the revision petition is accepted; the impugned order is set aside and the case is remanded to the trial Court. The trial Court may allow the applicants to lead evidence in support of their contentions, if so desired and then after hearing learned counsel for the applicants, a fresh order in accordance with law in the light of observations made in this order be passed.

The plaintiffs/applicants are directed to appear before the Court concerned on 31.08.2021.

18.08.2021

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**(H.S. MADAAN)**  
**JUDGE**

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No