

NARESH KUMAR
2022.11.04 09:41

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

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CR-21 of 2018 (O&M)
Date of decision: 31.10.2022

Sukhdev Singh

..Petitioner

Versus

Talwinder Kaur (deceased) through LRs and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Sirphikhi, Advocate,
for the petitioner.

Mr. Tarun Veir Singh Lehal, Advocate
for the respondents

ANIL KSHETARPAL, J(Oral)

1. The plaintiff has filed this revision petition against the order of dismissal of his application for restoration of appeal passed by the First Appellate Court on the ground that the petitioner is intentionally not appearing in the case.

2. Challenging its correctness, this revision petition has been filed. The petitioner herein is the original plaintiff. His suit for grant of decree of declaration that the alleged sale deed dated 29.05.1989 executed by Sh. Kartar Singh in favour of Defendant no.1 and subsequent sale deed executed by defendant no.1 in favour of defendant no.2 are illegal. The defendants did not appear before the trial Court, however the suit was dismissed ex-parte on 30.11.2012. The petitioner filed first appeal within the prescribed time. However, the appeal was dismissed for non-prosecution on 10.03.2016. He filed an application for restoration on 31.03.2016. i.e. in

the same month.

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However, the application was also dismissed in default on 28.07.2016. The petitioner claims that due to his illness, he requested his counsel to appear on his behalf but the counsel also did not appear and rather informed him that the case has been adjourned. The application for restoration was filed on 28.08.2016 i. e. within a period of one month from the date of dismissal of application for restoration.

3. As already noticed, the court has refused to restore the previous application filed for restoration of the appeal.

4. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

5. The First Appellate Court is the last court which can re-appreciate evidence and record findings of fact. The dispute is with regard to immovable property. The defendants did not choose to contest the suit. Both the applications were filed within one month from the date of order dismissing the appeal in default as well as the date of order dismissing the previous application for non-prosecution. In these circumstances, the court ought to have attempted to decide the case on merits rather than on technical considerations. It is well settled that the courts must make sincere endeavours to do substantial justice between the parties rather than defeating meritorious claims on procedural irregularities.

6. Keeping in view the aforesaid facts, the orders dated 10.03.2016 and 18.09.2017 are set aside. The first appeal is restored to its original number. The First Appellate Court is requested to decide the appeal within a period of 3 months from the next date of hearing, positively.

7. The parties through their counsels are directed to appear before

the First Appellate Court on 29.11.2022.

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8. All the pending miscellaneous applications, if any, are also disposed of.

October 31, 2022

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**(ANIL KSHETARPAL)
JUDGE**

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>