

102

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-2806-2015 (O&M)****Date of Decision: November 10, 2022**

Gurmeet Singh

..... Petitioner

Versus

Amrinder Singh and anr.

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.R.K. Singla, Advocate for the petitioner.

Mr. Atul Jain, Advocate for respondent No.1.

Mr. Rakesh Chopra, Advocate for respondent No.2.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition challenge has been made to an order dated 13.11.2014 passed by Additional District Judge, Ludhiana; whereby an appeal preferred at the instance of present petitioner against the order dated 25.05.2011 passed by the learned Additional Civil Judge, Ludhiana dismissing his application seeking restoration of suit was declined.

The facts of the present case are that, based on an agreement to sell dated 16.11.1994, the petitioner/plaintiff (hereinafter referred to as 'the petitioner') filed a suit for possession by way of specific performance on 26.11.1996 and thereafter, written statement was filed by the respondent on 03.09.1998. After recording of the evidence of petitioner, the suit was dismissed in default on 23.01.2010 on account of his non-appearance. An application for restoration of the same was filed before the trial Court on 22.02.2010

with the averments that the counsel appearing on behalf of the petitioner noted down the date as 14.02.2010 instead of 23.01.2010.

The application seeking restoration of the suit was dismissed by the trial Court vide order dated 25.05.2011. Aggrieved against the same, the petitioner filed an appeal, however, the same was dismissed by the learned first Appellate Court being barred by limitation vide its order dated 19.10.2012.

Petitioner challenged the order dated 19.10.2012 before this Court by way of CR No.993-2013 and the same was allowed vide order dated 09.12.2013, condoning the delay in filing the appeal with a direction to first Appellate Court to decide the same on merits. Thereafter, the first Appellate Court vide its impugned order dated 13.11.2014, dismissed the appeal which has been impugned by way of present revision petition.

It has been contended by learned counsel for the petitioner that the suit was ordered to be dismissed in default on 23.01.2010; whereas an application seeking restoration was filed on 22.02.2010, without causing much delay. He further submits that the reason for dismissal of the suit for non-prosecution was in fact a bonafide mistake on the part of his counsel, who had noted down a wrong date in his diary. He further submits that the petitioner has been pursuing his suit before the Court below with all due diligence and never acted in a negligent manner.

On the other hand, learned counsel for respondent No.2 submits that in the present revision petition, no challenge has been

made to the order dated 23.01.2010 and in the absence thereof, no relief can be granted in favour of the petitioner.

I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of learned counsel for the petitioner. The facts and circumstances narrated hereinabove, giving all the details make it more than apparent that the petitioner has been pursuing his suit with all due diligence and there has been no indulgence on his part ever. The suit in the present case was ordered to be dismissed in default on 23.01.2010 because of noting down of a wrong date of hearing by learned counsel for the petitioner and immediately on having come to know about the said bonafide mistake, an application for restoration was moved on 22.02.2010 which was without causing much delay.

In my view, in the facts and circumstances of the present case, learned first Appellate Court while passing the impugned order has completely gone wrong while rejecting the prayer made for restoration of the suit. Instead of adopting a hyper-technical approach, learned first Appellate Court was required to adopt a judicious and pragmatic approach of permitting the parties to get their substantial rights adjudicated upon on merits; rather than curtailing those on account of technical errors/ defects. In fact, the orders passed by the Courts below have caused serious prejudice to the rights of the petitioner.

Still further, I do not find any merit in the contentions raised on behalf of respondent No.2; whereby it has been argued that no relief could be granted in favour of the petitioner due to the reason

that no challenge having been made to the order dated 23.01.2010. In fact, the order dated 23.01.2010 was sought to be recalled by way of filing an application which was dismissed by the trial Court on 25.05.2011 and thereafter, the appeal was dismissed vide impugned order dated 13.11.2014. As both the said orders are already under challenge in the present revision petition, no specific and categorical challenge to the order dated 13.01.2010 was required to be made at the instance of present petitioner in this revision petition.

In view of the discussion made hereinabove, the revision petition is allowed. Impugned orders dated 25.05.2011 and 13.11.2014 passed by both the Courts below rejecting the prayer made by the petitioner seeking restoration of the suit are hereby set aside. Civil Suit filed at the instance of the petitioner is ordered to be restored and be decided on merits by the learned trial Court.

Considering the facts that the agreement in the present case is of the year 1994, I deem it appropriate to request learned trial Court to decide the suit expeditiously, preferably within a period of 06 months from today.

Pending application(s), if any, shall also stand disposed of.

November 10, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>