

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

CR-2449-2017 (O&M)

Date of decision: 22.09.2022

Vijay Kumar

...Petitioner

Versus

M/s Friends Cable through its partners and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hem Raj Bhardwaj, Advocate for the petitioner

Mr. Ishan Gupta, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

The petitioner is the plaintiff, in a suit for rendition of accounts, with a consequential relief of permanent injunction. It was filed on 07.04.2014 but was dismissed in default on 18.10.2014. An application for restoration of the suit was filed on 04.09.2015, however, it was withdrawn on 17.11.2015 on the statement of the learned counsel representing the plaintiff that both the parties have compromised. The order passed by the court on 17.11.2015 is extracted as under:-

“The counsel for the applicant made a statement that the compromise has been effected between the parties and the present application be dismissed as withdrawn. In view of the statement the application is dismissed as withdraw. The file be consigned to record room.”

The plaintiff filed another application for restoration of the suit on 25.03.2016, which was dismissed being barred by the passage of time. The correctness thereof, has been challenged by filing the present revision petition.

Heard the learned counsel representing the parties at length

and with their able assistance perused the paperbook.

On the one hand, the learned counsel representing the petitioner contends that the defendants, after promising to render the accounts, have failed to honour the commitment. He submits that the plaintiff was left with no choice but to file an application.

On the other hand, learned counsel representing the respondent contends that the second application was filed on 25.03.2016 without any application for condonation of delay, therefore, the trial court has correctly dismissed the application being barred by time.

It is evident that when the first application for restoration of the suit was filed, the same was within the prescribed limitation period. During the pendency of the restoration application, the plaintiff withdrew the first application on the ground that the parties have settled the dispute with the intervention of the Panchayat. However, since the defendants did not honour the commitment made in the Panchayat, the plaintiff was left with no other choice but for to file the application for restoration, of the application for restoration of the suit. The plaintiff while filing the application on 25.03.2016 has asserted as under:-

“6. That the plaintiff could not file the present application within time as the defendants always assured the plaintiff that they will render the account to him and need not to get to the court for it and linger on.”

The question of limitation is required to be examined in the context of cause of action. The second application for restoration was filed by the plaintiff only after the defendants failed to honour the

aforesaid commitment. In fact, the plaintiff should have made a prayer for the restoration of the first application filed for the restoration of the suit. The first application for the restoration of the suit was dismissed as withdrawn. It was never dismissed in default. The application was withdrawn on the specific statement of the counsel that the parties have settled the matter amicably. Keeping in consideration aforesaid circumstances, first of all there was no delay. Secondly, even if there was delay, the same stood explained in para no. 6 of the application, which has been extracted above. It is not a necessary requirement of law that the prayer for condonation of delay should be made by a separate application, if necessary ingredients have been pleaded in the application itself.

Keeping in view the aforesaid facts, the order dated 28.09.2016 under challenge is set aside. The first application filed for restoration of the suit shall stand restored. The parties through their counsel are directed to appear before the trial court on 19.10.2022. It is hoped that the trial court would decide the application for restoration of the suit within one month, from the date of receipt of the certified copy of the order.

The revision petition stands allowed.

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

22.09.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE