

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

316

**CR No. 3389 of 2015
Date of decision : 18.10.2022**

Ramandeep @ Billu**.....Petitioner****Vs.****Maninder Singh Bedi and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. I.S. Saggu, Advocate, for the petitioner

Mr. Kanwaljit Singh, Senior Advocate with
Ms. Neha Anand Mahajan, Advocate, for respondents no.1 & 2

Mr. Anil K. Ahuja, Advocate, for respondent no.3

TRIBHUVAN DAHIYA, J. (Oral)

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 31.1.2015 (Annexure P-5) passed by the lower Appellate Court, and the order dated 1.5.2014 (Annexure P-3) passed by the trial Court, dismissing the petitioner/plaintiff's (hereinafter referred to as 'the plaintiff') application for restoration of suit.

2. The suit for declaration and possession filed by the plaintiff on 26.5.2006 was dismissed in default by the trial Court at Patiala on 20.8.2008. The plaintiff filed an application for restoration of the suit, on the ground that her absence before the trial Court on 20.8.2008 was neither intentional nor willful. It was only because her counsel Sh. Achhar Kumar, Advocate, told her that she need not come to attend the Court proceedings on each date of hearing from Jalandhar. When the plaintiff did not hear anything from her counsel, she on 1.5.2009 came to Patiala to enquire about

the progress of the case, and only at that time, she was told by her counsel that the suit was dismissed in default on 20.8.2008. In these circumstances, the application for restoration of the suit was filed on 6.5.2009.

3. These averments were denied by the respondents/defendants, apart from stating that the application was hopelessly time barred. It was further averred that apart from the civil suit, a criminal complaint bearing No. 201T/108 dated 15.7.2005, under Sections 420, 465, 467, 468, 471 and 120B IPC, Police Station Civil Lines, Patiala, titled as *Maninder Singh Bedi v. Ramandeep Kaur and others* was also pending between the parties before the Judicial Magistrate Ist Class, Patiala, and the plaintiff was being represented by the same counsel Mr. Achhar Kumar, Advocate, in both the cases. It is further averred that on the date of dismissal of the suit in default on 20.8.2008, as well as on subsequent seven dates, the plaintiff duly appeared before the Judicial Magistrate at Patiala. Therefore, the application was liable to be dismissed.

4. Both the parties led evidence before the trial Court on the issues framed as under;

1. Whether there are sufficient grounds to set aside the order dated 20.8.2008 whereby suit of plaintiff was dismissed in default?

OPA

2. Whether application of the applicant is within limitation?

OPA

3. Whether application of applicant is not maintainable in the present form? OPR

4. Relief.

5. After considering the evidence on record, the trial Court dismissed the application for restoration on the ground that the plaintiff had the knowledge about dismissal of her suit in default on 20.8.2008 from the very beginning. There was no evidence on record that she came to know

about it only on 1.5.2009. The application was, therefore, beyond limitation as, it could be filed within thirty days of the dismissal of the suit. Besides, it was also held that she was duly appearing in the other criminal case pending between the parties on different dates. The findings of the trial Court were affirmed by the lower Appellate Court in its judgment dated 31.1.2015. Relevant paragraph no.14 of the judgment is reads as under;

14.In order to prove her allegations, the appellant/plaintiff herself stepped into the witness box as PW1 and she admitted tht she is being represented by Shri Achhar Kumar, Advocate in the civil case and the criminal complaint. The respondents examined Ahlmad Ravinder Singh as RW1. He proved the orders passed in Criminal Complaint as Ex. D1 to Ex.D8 and Vakalatnama Ex.D1. From perusal of Vakalatnama Ex.D1, it is clear that in the complaint titled as Maninder Singh v. Ramandeep Kaur, Achhar Kumar, Advocate represented Ramandeep Kaur and the copies of orders Ex, D2 to Ex.D8 show that on 4.9.2008, 6.11.2008, 6.2.2009, 3.3.2009, 9.7.2009 20.8.2009, the appellant/plaintiff Ramandeep Kaur remained present before the Court of JMIC, Patiala. So, the plea taken by appellant/plaintiff that she came to Patiala on 1.5.2009 after filing of the suit is proved false as per order dated 4.9.2008 Ex.D2, it is clear that on 4.9.2008 after about 15 days of dismissal of suit, the appellant/plaintiff appeared in the Court of JMIC, Patiala and again on 6.11.2008, she appeared in the Court of JMIC, Patiala, and it cannot be believed that she was not having knowledge regarding dismissal of her suit. In fact, from the orders Ex. D2 to Ex.D8, it is proved that the appellant/plaintiff used to appear in the Court of JMIC, Patiala, but she kept mum for a period of more than eight months. No doubt, the application for restoration of the case can be filed within 30 days from the date of knowledge of dismissazl of the suit, but in the present case, it is not proved that the appellant/plaintiff came to know about the dismissal of the suit on 1.5.2009. So, I find that the learned trial Court has rightly dismissed the application.

6. Learned counsel for the parties have been heard, and the case file perused.

7. As per the undisputed facts on record, apart from the civil suit in question, a criminal complaint between the parties, as mentioned above, was also pending before the Judicial Magistrate at Patiala. Both, the criminal complaint as well as the civil suit, were being tried in the same premises. Besides, the plaintiff was being represented by the same counsel in both these cases, namely, Mr. Achhar Kumar. It is also not in dispute that on 20.8.2008 also, the plaintiff was present in the Court complex, and she did appear before the Judicial Magistrate in the criminal complaint. Further, she kept on appearing in the criminal complaint on subsequent dates also, as duly recorded in the order of the lower Appellate Court. In this factual background, it cannot be believed that the plaintiff was not aware of the dismissal of her suit in default on 20.8.2008; nor can it be believed that she was not informed by her counsel about this fact.

8. Therefore, it is apparent that the plaintiff has not come to the Courts with clean hands and has concocted a story with false averments. Provisions of Order IX Rule 4 CPC require that for restoration of a suit, the plaintiff must show sufficient cause for his/her non-appearance. In the undisputed facts of the case, the plaintiff has failed to show any sufficient cause for her failure to appear before the Court which led to dismissal of her suit in default; rather, an attempt has been made to mislead the Court by false averments. Her conduct is not *bona fide*.

9. In view of the aforesaid, there is no ground to interfere with the findings recorded by the Courts below.

10. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

18.10.2022

Ashwani

Whether Speaking/Reasoned :
Whether Reportable :

Yes/No
Yes/No