

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 431 of 2016

Date of Decision: 17.11.2022

Sham Singh (Now Deceased) through his Legal Representatives

... Petitioner(s)

Versus

Jagmohan Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Karan Gupta, Advocate
for the petitioner(s).

Mr. Fariad Singh Virk, Advocate
for the respondent.

Anil Kshetarpal, J.

1. Assailing the correctness of order passed by the trial Court on 21.12.2015, the present revision petition has been filed.
2. The petitioner is the plaintiff in a suit for possession by way of specific performance of the agreement to sell. The suit was dismissed for non-prosecution on 24.10.2009 as the plaintiff has failed to complete the service of notice upon the defendant. An application filed by the plaintiff on 03.12.2009 for restoration of the suit has also been dismissed. The correctness of both the aforesaid orders has been challenged.
3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.
4. The suit was dismissed when the plaintiff failed to serve the notice upon the defendant by taking dasti notice (by hand). In the

application, the petitioner stated that he is a 70 years old man. He is resident of Patiala, which is located far away. He had asked the Clerk of his counsel to take dasti summons and get the service effected on the defendant. However, the Clerk of the learned counsel remained under the impression that the plaintiff would come and get the summons issued. Thus, it was claimed that the plaintiff is not at fault. After notice of the application for restoration of the suit was issued and the reply was filed, the trial Court culled out the issues and directed the parties to lead evidence. The plaintiff appeared in the witness box as AW.1, however, he passed away before he could face the cross-examination. His son appeared as AW.2, but did not come for cross-examination. Subsequently, a power of attorney was examined. The trial Court has drawn an adverse inference as neither the plaintiff nor his son appeared for cross-examination.

5. It would be noted here that the Clerk of the learned counsel filed an affidavit stating that he remained under the impression that the plaintiff would come and collect the summons.

6. The plaintiff has filed the suit after depositing an *ad valorem* court fee of ₹3,530/-. It is well known that the rules of procedures are handmaids of justice. Once an application for restoration of the suit was filed merely after a period of one month from the date of dismissal of the suit, the trial Court should have restored the same. After having kept the application pending for six years, it was ordered to be dismissed. In the considered view of the Court, it has resulted in unfruitful use of the Court's precious time. It is not in dispute that the plaintiff died before he could face cross-examination. Moreover, the plaintiff did examine his power of

attorney. The Clerk of the counsel has also filed an affidavit. In these circumstances, the conclusion drawn by the trial Court is myopic. The trial Court should always make endeavours to decide the cases on merits, rather than defeating them on default or technicalities. In this case, there was no reason to draw an adverse inference.

7. Keeping in view the aforesaid facts, the order dated 21.12.2015 is set aside. The revision petition is allowed, subject to payment of cost of ₹5,000/- which shall be a condition precedent to the further proceedings in the suit. The suit shall stand restored to its original number. The parties through their learned counsel are directed to appear before the trial Court on 16.12.2022.

(Anil Kshetarpal)
Judge

November 17, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No