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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4265-2017 (O&M)

Date of Decision:04.08.2022

Balwant Kaur

.. Petitioner

Vs.

Saun Ram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sumeet Jain, Advocate for the petitioner.

Mr. Vicky Sharma, Advocate for
Mr. Sunil Sharma, Advocate
for respondent No.1(b)(i), 1(c)(i), 1(e), 1(f), 1(g) and 1(h).

...

Manoj Bajaj, J. (Oral)

Petitioner (plaintiff) has filed this revision petition to challenge the orders dated 21.12.2002 (Annexure P-2) and 07.10.2011 (Annexure P-5) passed by Addl. Civil Judge (Sr. Divn.), Kharar, whereby firstly his civil suit titled as “*Balwant Kaur Vs. Saun Ram and others*”, was dismissed in default on 21.12.2002, and later his application for restoration of the civil suit was also dismissed.

Brief facts of the case are that the plaintiff (petitioner) filed a suit for possession against respondents (defendants) by way of specific performance of agreement dated 30.12.1992 relating to the suit property measuring 1 K 3 M and further sought declaration that the part of the land sold by defendant No.1 in favour of defendant No.2-Joginder Singh and further transfer of the property by defendant No.2, in favour of defendant No.3 is illegal, null and void. Apart from the relief of declaration, the consequential relief of permanent injunction restraining the defendants from

alienating the suit property was also prayed for.

During the pendency of the suit, defendant No.1 Saun Ram had expired and an application for bringing on record his legal representatives was filed and the case was fixed for 21.12.2002 for filing reply to the said application and on the said date, when the case was called, the counsel for the plaintiff did not appear, as he was busy in some other Court and the suit was dismissed in default. On the same day, an application for restoration of the suit was moved by plaintiff's counsel, who explained the sufficient reason for his non-appearance, but the application remained pending and the reply to the said application was filed by defendant on 28.08.2006. Thereafter, the Addl. Civil Judge (Sr. Divn.), Kharar proceeded with the said application, as a suit and recorded evidence of the parties and finally, dismissed the same vide order dated 07.10.2011.

Aggrieved against the said decision dated 07.10.2011, the plaintiff preferred appeal under Order XLIII Rule 1(C) CPC and the same was withdrawn on 23.05.2017, as it was not maintainable. Thus, the petitioner has approached this Court by filing present revision petition to challenge the orders dated 21.12.2002 and 07.10.2011 (Annexures P-2 and P-5) respectively.

Learned counsel for the petitioner has argued that as the plaintiff's counsel was busy in some other Court, therefore, he failed to appear when the case was taken up for hearing, but Addl. Civil Judge (Sr. Divn.), Kharar proceeded to pass the extreme order of dismissal of suit in default. He submits that though the application for restoration was moved on the same date, wherein the absence was sufficiently explained, but despite that, the trial Court proceeded to dismiss the application on

07.10.2011 (Annexure P-5). According to him, the impugned orders are bad in law and deserve to be set aside.

On the other hand, learned counsel for the defendants/respondents has argued that the application filed for restoration of the suit was not supported with any affidavit, therefore, the trial Court rightly passed the impugned order on 07.10.2011. He submits that plaintiff had failed to adduce convincing evidence to show that the absence of the counsel for the petitioner on 21.12.2002 was for a sufficient reason, therefore, the application for restoration of the suit was rightly dismissed. He prays that the revision petition be also dismissed.

After hearing the learned counsel and considering the facts and circumstances of this case, this Court finds that the order dated 07.10.2011 (Annexure P-5) reflects insensitive approach on the part of the Presiding Officer, who not only wasted the precious time of the Court in recording the evidence on the application for restoration of the suit, but has also not carefully examined the pleadings of the parties. The application for restoration (Annexure -3) filed by the plaintiff's counsel contains the specific averment that as he was engaged in some other Court, therefore, it resulted in his absence, and further para 4 of the application explaining a sufficient reason for absence of counsel was not even controverted by the defendants in their reply. Thus, by keeping the said application of restoration pending and recording evidence till 2011, not only establishes lack of judicious approach, but it also added insult to the plaintiff's injury. Besides, it needs to be noticed here that on the date, when the suit was dismissed in default, it was fixed for filing reply to the plaintiff's application seeking impleadment of LR's of defendant No.1, but neither

reply was filed nor any one had appeared on behalf of the defendant No.1, therefore, this Court has no hesitation in holding that the trial Court has shown extremely rigid approach in refusing to restore the suit.

Before parting with the judgment, considering the facts and circumstances of this case, this Court is compelled to observe that the civil Court must take into account the previous conduct of the parties before it decides to pass an adverse order on account of non appearance of a party. No doubt, the order IX contains certain provisions, which empower the Court to either dismiss the suit in default or proceed against the defendant *ex parte*, but the powers vested with the Court must be exercised prudently, as ordinarily the application for restoration of the suit or setting aside the *ex parte* orders are filed, which result in delay to the disposal of the suit on merits.

Thus, the revision petition is allowed, the impugned orders are set aside and the suit of the plaintiff/petitioner is restored to its original number. Since, the suit was filed by plaintiff on 22.11.2000 and the same is at the initial stage, therefore, it is ordered that the same be decided expeditiously preferably within a period of six months.

04.08.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No