

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

CR-4832-2018 (O&M)

Date of decision: 23.08.2022

Manoj Rana

...Petitioner

Versus

Smt. Gayatri Mandal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rahul Deswal, Advocate for the petitioner
 Mr. Sidharth, Advocate for
 Ms. Vijay Lakshmi, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

The petitioner herein was the plaintiff in a suit for possession by way of specific performance of the agreement to sell with a consequential relief of permanent injunction. He claims that the defendant-respondent on receipt of Rs.7,00,000/- out of the total sale consideration of Rs.10,00,000/- agreed to sell House No.150-A, measuring 160 square yards located in Rajiv Colony, Near Balmiki Basti, Karnal. On 21.10.2013, the plaintiff was present for examination as a witness, however, the learned counsel representing the defendant sought time from the court. The case was adjourned to 26.05.2014. On 26.05.2014, once again, the plaintiff was present, however, the court did not get time to record his evidence. Hence, the case was again adjourned to 16.09.2014. Once again on 16.09.2014, the plaintiff was present for his deposition, however, an adjournment was sought. Thereafter, the case was again adjourned. Both the counsels representing the respective parties sought time for exploring the possibility of the compromise. The matter went to the Lok Adalat, however, the settlement could not be

arrived at. On 11.02.2015, the suit was dismissed for non-prosecution, as the plaintiff did not appear. An application for the restoration of the suit was filed on 04.07.2015 in which a notice was issued. Pursuant thereto, the defendant entered appearance and sought time for filing the reply. As many as four adjournments were granted for filing the reply. On 06.04.2017, when the case was fixed for filing reply to the application for restoration, the matter was again dismissed in default as the plaintiff did not appear on that date. The plaintiff once again filed an application for restoration of the previous restoration application filed on 04.07.2015 which was dismissed by the court.

Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

On 06.04.2017, the case was only fixed for filing reply to the application for restoration on behalf of the defendants. At the most, the right to the application for restoration of application for restoration of the suit could be dismissed for non prosecution.

Before dismissing the case for non-prosecution, the court has to examine the conduct of the parties. Merely because a particular party is not present on a particular date of hearing should not result in passing of such a drastic order of dismissal of the suit for non-prosecution. Learned counsel representing the defendant failed to draw the attention of the Court to such kind of conduct which may lead the Court to draw a conclusion that the plaintiff was not serious in prosecuting his case. While filing the suit, the plaintiff paid the ad-

valorem court fee on the amount of Rs.7,00,000/-.

The courts should make sincere endeavours for decision of the suit on merits rather than deciding it on the basis of trivial errors or default. If such kind of perverse orders are passed, the court ends up wasting more time on the technicalities rather than deciding the matters on merits.

Keeping in view the aforesaid facts, the orders dated 11.02.2015, 06.04.2017 as well as 15.05.2018 are set aside. The suit is restored to its original number. The trial court is requested to proceed with the suit. The parties through their respective counsels are directed to appear before the trial court on 22.09.2022. Let the suit be decided within a period of one year, from today, positively.

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

23.08.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE