

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6548 of 2017 (O&M)
Date of decision: 29.09.2022

Harbhajan Singh

..Petitioner

Versus

Amrik Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Sirphikhi, Advocate
for the petitioner.

ANIL KSHETARPAL, J(Oral)

Despite the service of notice, the respondent has not entered appearance.

The petitioner herein is a plaintiff in a suit for declaration that the plaintiff is an owner in possession of the plot measuring 10 marlas of khasra no.14/27, with a consequential relief of permanent injunction restraining the defendant from illegally and forcibly dispossessing him.

The suit was filed in the year 2003. The defendant contested the suit and the plaintiff led his evidence. When the case was fixed for the further cross-examination of defendant's witness, the suit was dismissed in default on 24.04.2013, on account of non-appearance of the plaintiff or his counsel. The plaintiff filed an application for the restoration of the suit on 24.01.2014. In the application, the petitioner asserted as under:-

“That the case was not put up for evidence on 23.03.2013 , again 27.05.2013 and further again on 03.07.2013, the applicant enquired from the Ahalmad of the court of Shri Sumit Makkar Civil Judge (Jr. Divn.) Batala, today i.e. 24.01.2014 who stated that the said suit has been dismissed in default on 24.04.2013, so the absence of the applicant is neither nor wilful.”

The trial court has dismissed the application on the ground of

limitation. It has been held that the application was required to be filed within 30 days from the date of dismissal of the suit.

This Bench has heard the learned counsel representing the petitioner at length and with his able assistance perused the paper book.

Undoubtedly, the trial court is correct in observing that the application for restoration is required to be filed within a period of 30 days from the date of dismissal of the suit. However, Section 5 of the Limitation Act, 1963 enables the Court to condone the delay if a sufficient cause is shown. Though, the petitioner did not file any separate application for the condonation of delay, however, ingredients of condonation of delay were pleaded in para 2 which has been reproduced above.

It is well settled that the rules of procedure are handmaid of justice. The Court must make sincere endeavour for deciding the cases on merits rather than on pure technicalities.

In view of **Bhagmal and others vs. Kanwar Lal and others (2010) 12 SCC 159**, the Supreme Court has held that even the ingredients of the condonation of delay have been pleaded in the application or the grounds of appeal, filing of separate application for condonation under Section 5 of the Limitation Act, 1963 is not mandatory.

The plaintiff has already led his evidence. The suit was at a very advanced stage.

Keeping in view the aforesaid facts, the delay in filing the restoration application is condoned. Consequently, the suit is restored to its original number.

The petitioner is directed to appear before the trial Court on 28.10.2022. The Court will issue notice to the defendant and thereafter,

proceed with the suit.

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

September 29, 2022

(ANIL KSHETARPAL)
JUDGE

nt

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>