

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7892 of 2017(O&M)
Date of Order: 04.04.2022

Sandeep

..Petitioner

Versus

Anant Ram

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chander Pal Tiwana, Advocate
for the petitioner.

Mr. J.P.Dhull, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of the order dated 03.10.2015, passed by the Additional District Judge, Kaithal, the petitioner has filed the present revision petition.

The First Appellate Court vide order dated 03.10.2015, has refused to restore the first appeal and decide it on merits which was dismissed in default.

The plaintiff filed a suit for grant of decree of possession on the basis of title. He claims that he purchased the property vide sale deed dated 25.09.2001.

The defendant contested the suit while asserting that a previous suit filed by the plaintiff through his guardian was dismissed under Order 17 Rule 3 CPC.

The learned trial Court dismissed the suit, primarily, on the ground that the previous litigation has not been disclosed and since the aforesaid judgment and decree has attained finality, therefore, the plaintiff

has no locus standi.

The first appeal filed by the petitioner was dismissed in default on 17.09.2010. On an application filed, the appeal was restored on 19.11.2010. However, it was once again dismissed in default on 27.11.2010. An application filed by the petitioner on 06.06.2011 with a prayer to restore the appeal has been dismissed by the Court by way of the impugned order.

The First Appellate Court while dismissing the application for restoration has, again, observed that the previous suit filed by the plaintiff through his guardian has been dismissed.

While hearing the application for restoration of the appeal, the Court was required to focus only on the grounds asserted for restoring the first appeal. The first appeal is a valuable statutory right. The Court of appeal is the last Court of fact. Hence, the First Appellate Court is required to make sincere endeavours for disposal of the first appeal on merits.

Order 41 Rule 19 CPC permits the Appellate Court to re-admit the appeal which has been dismissed in default. In the present case, the petitioner appears to be an unfortunate person, who after having filed the appeal has failed to prosecute the appeal in a proper manner. In such circumstances, the Court is required to take a broader view of the matter, in the interest of justice.

Keeping in view the aforesaid facts, the order under challenge is set aside while restoring the first appeal to its original number.

Let the First Appellate Court decide the appeal on merits within a period of 2 months, from today.

The parties through their counsels are directed to appear before the First Appellate Court, on 20.04.2022.

Disposed of accordingly.

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

April 04, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No