

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

1.CR-1568-2022 (O&M)

Royal Orchid Company through its partners
....Petitioners

Versus

Rajinder Prashad Goyal and others
..Respondents

2.CR-1569-2022 (O&M)

Royal Orchid Company through its partners
....Petitioners

Versus

Rajinder Prashad Goyal and others
..Respondents

3.CR-1600-2022 (O&M)

Royal Orchid Company through its partners
....Petitioners

Versus

Rajinder Prashad Goyal and others
..Respondents

Date of decision: 23.09.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Karan Gupta, Advocate for the petitioners

ANIL KSHETARPAL, J (Oral)

By this order, three revision petitions i.e CR-1568, 1569 and
1600 of 2022 shall stand disposed of.

Despite the repeated attempts, notices sent to respondent
no.1 to 4 could not be served. Efforts have been made to serve the
respondents through their counsel, who has returned the summons with
the report that he is not in touch with them. Notices issued to respondent

no.3 have been received back served through his son, however, he remains unrepresented.

Learned counsel representing the petitioners submits that as many as 16 identical suits, between the same parties were pending in which identical orders were passed by the Court. While drawing the attention of the Court to the order passed in '**Royal Orchid Company vs. Rajinder Prasad Goyal and others**' (CR-7568-2016 and connected cases decided on 14.02.2019), he submits that in identical cases, the following order has been passed:-

“Mr. Karan Gupta, learned counsel appearing on behalf of the petitioner submitted that plaintiff filed suits for declaration by challenging the various sale deeds on the grounds stated therein. It was submitted that during the pendency of the suits, a compromise dated 17.04.2012 was arrived at between the parties. That suit was dismissed as withdrawn. According to the plaintiff, defendants did not honour the compromise, necessitating to submit application for recalling of the order whereby suit was dismissed as withdrawn on the basis of compromise. The said application was taken up by the Civil Judge on 21.05.2012 and adjourned the matter by seeking report of the Ahlmad for 04.06.2012. On 04.06.2012 after the receipt of the report of the Ahlmad, case was adjourned for 25.08.2012. Notice of the application on filing of process fee was issued. On 25.08.2012, matter was adjourned for 17.10.2012 as notice could not be issued on account of non-deposit of process fee. The trial Court, vide order dated 17.10.2012, dismissed the said application by invoking the provisions of Order 9 Rule 2 CPC on account of non-deposit of process fee. In fact, the petitioners were not in the knowledge of the aforesaid factum and after acquiring knowledge, application for restoration under Order 9 Rule 4 (Annexure P/2) was submitted, but it has erroneously been dismissed by the trial Court.

Learned counsel, further, submitted that

no harm and prejudice would be caused in case, impugned order is set aside. There was no intention of the petitioners to delay the proceedings being affected parties.

Mr. Ashish Gupta, learned counsel for the respondents defendants submitted that application filed, under Order 9 Rule 4 dated 16.05.2013 whereby the application for recalling, was dismissed in default on 17.10.2012 as it was hopelessly belated as it was not accompanied by any application for condonation. Knowledge can always be manipulated, thus, prayed for dismissal of petition.

I have heard learned counsel for the parties and perused the paper book.

Compromise and the suit having been dismissed as withdrawn on 18.04.2012 are not in dispute. But as per contents of application dated 21.05.2012 (Annexure P-5), order dated 18.04.2012 was sought to be recalled. Zimni orders referred to in the grounds of revision petition reflect pendency and dismissal in default on 17.10.2012. Application was filed in the month of May, 2013 almost 7 (seven) months after the order. The contents of the application reveal that applicants acquired the knowledge of the order only in 2nd week of March 2013 after enquiring from the counsel who did not inform them which necessitated them to move application through different counsel. The Court below should not have adopted such a hypertechnical approach for adjudication of the application seeking restoration of the order on the grounds stated therein, thus, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to allow all the afore-mentioned 13 revision petitions.

Keeping in view the aforementioned observations, the impugned order is set aside subject to payment of costs of Rs.2,000/- in each case and application for restoration of application for recalling is allowed.

Accordingly, all 13 (thirteen) aforementioned revision petitions stand allowed.”

It is evident from the reading of the order that the court has restored the suit, particularly in view of the fact that the respondent did not adhere to the terms of the statement.

Keeping in view the aforesaid facts, the present revision petitions are also allowed in the same terms as in '**Royal Orchid Company vs. Rajinder Prasad Goyal and others**' (CR-7568-2016 and connected cases decided on 14.02.2019). However, the respondents shall have liberty to file an application to recall, if they feel aggrieved. The petitioners, through their learned counsel are directed to appear before the trial court on 18.10.2022.

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

23.09.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE