

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

CR-2316-2022 (O&M)

Date of decision: 19.12.2022

Harjeet Singh @ Harjit Singh

....Petitioner

Versus

Moninder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajeev Dev Sharma, Advocate for the petitioner

Mr. Sunil Kumar Jain, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. The petitioner herein is a defendant in a plaintiff's suit for grant of decree of declaration that the alleged agreement to sell, executed by the plaintiff, in favour of the defendant, is no longer enforceable as the defendant has failed to perform his part of the contract. The aforesaid suit filed by the plaintiff was decreed on 24.08.2015. The defendant filed his first appeal on 09.10.2015. After having sought as many as six adjournments for addressing the arguments, the appeal was dismissed for non-prosecution, as neither the defendant nor his counsel appeared in the court. Subsequently, at 3:00 p.m, the file was taken up at the request of the learned counsel representing the defendant, who pleaded no instructions. Hence, the appeal was again dismissed for non-prosecution.

2. After a delay of 424 days, an application for restoration of the appeal was filed, which has been dismissed by the First Appellate court. This revision petition has been filed challenging the correctness of the aforesaid order.

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

4. On the one hand, the learned counsel representing the petitioner contends that the appeal should have been restored and decided on merits.

5. On the other hand, the learned counsel representing the respondents submits that the plaintiff has neither filed any suit for specific performance nor any counter claim. He submits that the petitioner is interested in continuing with the possession though he has no rights to the property in dispute.

6. Ordinarily, the court is expected to decide the cases on merits rather than on defaults and techicalities. However, in the present case, the petitioner claims to be in possession pursuant to an agreement to sell. The aforesaid agreement to sell has ceased to exist once the judgment and decree was passed in the year 2015. The petitioner neither filed any suit for specific performance nor filed any counter claim. Moreover, the petitioner has failed to furnish sufficient explanation for the delay of 424 days in filing the appeal. Hence, no ground to interfere is made out.

7. Dismissed.

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

19.12.2022
rekha
Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(ANIL KSHETARPAL)
JUDGE