

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

CR-2679-2022
Decided on : 15.07.2022

Darshan Singh

..... Petitioner

Versus

Diltaj Singh and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Surinder Garg, Advocate
 for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant revision petition has been preferred for setting aside the orders dated 20.01.2020 and 13.05.2022 (Annexures P-11 and P-15 respectively) passed by Addl. District Judge, Faridkot vide which an appeal preferred by the petitioner was dismissed and an application for restoration of the said appeal was also dismissed.

Learned counsel for the petitioner submits that after the objections under Order 21 Rule 66 CPC filed by the petitioner were dismissed by the Executing Court vide order dated 19.07.2017, an appeal was preferred by the petitioner against the aforesaid order under Order 43CPC along with an application for condonation of delay under Section 5 of Limitation Act. However, when the case was fixed for petitioner's evidence in the application for condonation of delay, the Appellate Court dismissed the said application vide order dated 20.01.2020 (Annexure P-11) due to the absence of the petitioner. Learned counsel for the petitioner

further submits that the petitioner is a 76 years old man and his counsel had assured him that as and when his appearance before the Court was required, he would be duly informed. However, the petitioner was never informed by his counsel to bring forth any evidence in the application filed for condonation of delay. Learned counsel still further submits that it was on account of the aforementioned that the petitioner was unaware about the proceedings and his absence before the trial Court was not intentional. He submits that the Appellate Court, thus, erred in dismissing the application moved by the petitioner under Order 41 Rule 19 CPC for restoration of application under Section 5 of Limitation Act vide order dated 13.05.2022 (Annexure P-15).

Heard learned counsel and perused the relevant material on record.

A perusal of the impugned order dated 20.01.2020 (Annexure P-11) reveals that the petitioner was granted as many as 12 effective opportunities to lead his evidence, however, despite being given last opportunity he failed to lead the same even though the petitioner was duly represented by his counsel. On 20.01.2020, the petitioner failed to put in an appearance either in person or through his counsel and the Court dismissed his application under Section 5 of the Limitation Act. It would be pertinent to point out that the appeal against the dismissal of objections was filed after a delay of almost three months and thereafter an application under Order 41 Rule 19 CPC for restoration of the application for condonation of delay was filed, which too was after a delay of about 150 days. It thus, makes it abundantly clear that the petitioner was not diligent enough to

pursue his case. In the circumstances, the Appellate Court was perfectly justified in passing the impugned orders. The decree was passed way back on 09.08.2016 and the respondent-decree-holder now cannot be deprived of the fruits of the decree, more so, when the petitioner as already observed above, had been granted sufficient opportunities to contest his appeal against the dismissal of his objections. The execution proceedings cannot be allowed to become second round of litigation.

As a sequel to above, this Court does not inclined to interfere in the impugned orders passed by the Court below. Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

15.07.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No