

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6089 of 2019(O&M)
Date of Order: 06.04.2022

Hari Parkash Mangla

..Petitioner

Versus

Ram Niwas (since deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Bhan, Sr. Advocate, with
Mr. Santosh Kumar Sharma, Advocate
for the petitioner.

Mr. Ashwani Talwar, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

The plaintiff assails the correctness of the orders passed by the trial Court on 25.02.2016 and the order passed by the Appellate Court on 19.08.2019, while refusing to restore the suit which was dismissed in default on 30.09.2010. He filed a suit for grant of decree of specific performance of the agreement to sell with a consequential relief of possession and permanent injunction. The plaintiff valued the suit for the purpose of Court fee and jurisdiction at Rs.1,15,43,000/- and affixed the court fee of Rs.4,66,100/-.

During the pendency of the suit, the plaintiff was permitted to amend the plaint vide order dated 22.07.2010. the Court adjourned the case to 30.09.2010 for filing the amended plaint. On account of failure of the counsel to appear on 30.09.2010, the suit was dismissed for non-prosecution.

An application for restoration of the suit was filed 6.10.2010 i.e. within a period of 6 days, from the date of dismissal of the suit in default.

Both the courts below as noticed have refused to restore the suit on the ground that the application was drafted without even examining the court file. Both the courts have also held that the plaintiff has on more than one occasion has asserted that on 30.09.2010, the amended written statement was required to be filed.

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

The learned counsel representing the respondents, with all the vehemence at his command, submits that the High Court should not interfere with the orders passed by the courts below particularly when the plaintiff and his counsel were thoroughly negligent in prosecuting the suit.

It is well settled, that the rules of procedure are to advance advancing the cause of justice. The courts are required to make sincere attempt to decide the lis on merits while ignoring omission and mistakes which are curable. In the present case, the application for restoration of the suit was filed within a period of 6 days. Unfortunately, there is an error in the application seeking restoration of the suit. However, the Court should have taken a broader view of the matter.

Furthermore, on 30.09.2010, the Court had called upon the plaintiff to file an amended plaint. The Court at the most could deny the plaintiff an opportunity to file an amended plaint. In fact, the main suit was not fixed for hearing.

Keeping in view the aforesaid facts, the revision petition is allowed. The orders under challenge are set aside.

The parties through their counsels are directed to appear before the trial Court, on 21.04.2022.

Since, the suit was filed in the year 2007, therefore, the trial Court is requested to make a sincere endeavour for the expeditious disposal.

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

April 06, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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