

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

-:-

SAO No.13 of 2020 (O&M)
Reserved on : 24.08.2022
Date of Decision : 30.08.2022

Gajraj & Others

....Appellants

VERSUS

Mani Ram & Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Sanghi, Advocate for
Mr. S. K. Panwar, Advocate for the appellants.

ALKA SARIN, J.

The present appeal has been filed impugning the order dated 02.07.2018 passed by the Trial Court and order dated 28.05.2019 passed by the lower Appellate Court whereby the application filed by the plaintiff-appellants for restoration of the suit and setting aside order dated 26.09.2014 has been dismissed.

The plaintiff-appellants and the defendant-respondents are the children of one Chunni Lal. In around January 2012 the plaintiff-appellants filed a suit for declaration and permanent injunction against the defendant-respondents. The addresses of all the parties given in the suit is residents of Village Chandhut, Tehsil and District Palwal. On 26.09.2014 the suit was dismissed in default and the following order was passed :

“Case called up several times since morning. None has appeared on behalf of plaintiff. It is already 2.35 pm. No further wait is justified. Hence, the suit of the plaintiff is

dismissed in default. File be consigned to record room after due compliance.”

On 01.11.2017 the plaintiff-appellants filed an application for restoration of the suit and setting aside order dated 26.09.2014. It was averred that the counsel of the plaintiff-appellants wrongly intimated that they had succeeded in the suit and due to that reason the plaintiff-appellants could not appear before the Trial Court on 26.09.2014. It was also averred that the plaintiff-appellants came to know about the order of dismissal of suit on 26.10.2017 when certified copy received by them and that their absence was neither willful nor intentional. This application was not supported by any application for condonation of delay. The defendant-respondent No.1 contested the application contending that it was time barred and that no reason had been given by the plaintiff-appellants for their absence before the Trial Court on 26.09.2014. It was argued that father of both the parties had executed a Will in favour of the defendant-respondent No.1 regarding his movable and immovable property including the suit property and the same had been sold by the defendant-respondent No.1 to one Rajni of village Chandhut and if the suit was restored then it will further complicate the matter.

Vide impugned order dated 02.07.2018 the Trial Court dismissed the application. The plaintiff-appellants filed an appeal against the order dated 02.07.2018 which appeal was dismissed by the lower Appellate Court vide impugned order dated 28.05.2019. Hence, the present appeal by the plaintiff-appellants.

Learned counsel for the plaintiff-appellants has contended that the Courts below have erred in dismissing the application for restoration of the suit and setting aside order dated 26.09.2014. It was submitted that the

party should not suffer for any mistake by the counsel. It was further submitted that the Courts below erred in rejecting the application on technicalities i.e. on the ground of delay without examining the merits which has gravely prejudiced the plaintiff-appellants.

Heard counsel for the plaintiff-appellants and perused the paperbook.

The Trial Court while passing the impugned order dated 02.07.2018 held inter-alia as under :

“5. After having heard the arguments advanced by Ld. Counsels for parties and from the perusal of case file carefully this court is of the considered opinion that suit titled as “Gajraj Vs. Mani Ram” was dismissed in default by the court vide order dated 26.09.2014. Now, by way of filing present application, the applicants wants to restore the above said suit on the ground that their counsel intimated them that they are succeeded in suit. This was the sole reason given by the applicants for their non appearance before the court on 26.09.2014. It is very strange that despite succeed in case, the applicants fail to get the certified copy of judgment after 26.09.2014. As per the applicants they came to know about the order of dismissal on 26.10.2017 when they received copy of order. It is not possible that plaintiffs took three years to receive the certified copy of order dated 26.09.2014. Further, the above said facts also shows that present application is also bared by law of limitation. No application for condonation of delay filed

by the applicants. In these circumstances merely on the given facts that their counsel intimated that they were succeeded in suit is not a ground to set aside the order dated 26.09.2014. The reason given by applicants for their non-appearance before the court on dated 26.09.2014 is not found to be plausible and convincing. No reason is made out to allow the present application, which has been filed after a delay of three years which is also unexplained and that too without support of any application for condonation of delay.”

In the appeal against the said order, the lower Appellate Court held that :

“5. From examination of record in the light of aforesaid rival contentions, it is crystal clear that civil suit titled as Gajraj Vs. Mani Ram was dismissed in default on 26.9.2014. Appellants-plaintiffs pleaded that they came to know about the order of dismissal of suit on 26.10.2017 and preferred application for its restoration on 1.11.2017. The application was not supported by any application for condonation of delay in filing the application for restoration of suit. Learned trial court dismissed the application for restoration, filed after a delay of about three years without any explanation or application. The ratio of judgments is not in dispute. As such their critical analysis is not called for. In view of above material facts, arguments of learned counsel for appellants-plaintiffs-applicants

being devoid of merits are untenable. Impugned order does not suffer from any illegality or irregularity.”

Learned counsel for the plaintiff-appellants has not been able to point out how the findings recorded by the Courts below are erroneous or illegal. There is no satisfactory explanation forthcoming as to why the plaintiff-appellants or their counsel did not appear before the Trial Court on 26.09.2014 when their suit was dismissed in default. The suit was fixed for evidence of the plaintiff-appellants when it was dismissed in default. Further, the story put forth by the plaintiff-appellants also does not inspire confidence in view of the fact that all the parties to the dispute are siblings and are residents of the same Village. It does not appeal that the fact about the suit being dismissed in default did not come to the knowledge of any of the five plaintiff-appellants for almost three years.

The impugned orders passed by both the Courts below do not suffer from any illegality or infirmity. The present appeal, which is devoid of any merit, is dismissed. Since the appeal is being dismissed on merits, no separate order is being passed on the application for condonation of 39 days delay in filing the appeal (CM-5335-CII-2020). Other pending applications also stand disposed off.

Appeal dismissed.

**(ALKA SARIN)
JUDGE**

30th August, 2022
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NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO