

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

**CR-3631-2018 (O&M)
Date of decision: 26.07.2022**

Chander Kant

...Petitioner

Versus

Hansa Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vishal Munjal, Advocate
for the petitioner.

Mr. Vipin Mahajan, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 29.07.2017 (Annexure P-7), passed by the Civil Judge (Sr. Divn.), vide which an application filed by the respondent-plaintiff for restoring the Civil Suit No. 129 dated 24.12.2013, titled as ***Hansa Singh vs. Chander Kant***, was allowed.

Brief facts of the case are that respondent/plaintiff has filed the aforesaid suit for declaration on 09.12.2013 to the effect that he is owner in possession of the land as detailed in the plaint, instituted on 09.12.2013, with an averment that cause of action has accrued to the plaintiff on 06.10.2013. Later on, the plaintiff made a statement before the trial Court that he has compromised the case with the defendants and, therefore, he does not want to proceed further with the suit and the same may be dismissed as withdrawn. Accordingly, the suit was dismissed as withdrawn on 06.10.2014.

Learned counsel for the petitioner/defendant submits that the

petitioner thereafter paid an amount of Rs. 20 Lakh to the respondent/plaintiff, however, an application under Section 151 CPC was moved for restoration of the suit on 04.02.2016 on the ground that as per compromise, the entire payment is not made, which was allowed by the trial Court by passing the impugned order. The operative part of the order reads as under:

“Considerations heard. Case file is perused. Main civil suit has been dismissed as withdrawn by plaintiff Hansa Singh while making statement on 06.10.2014, alleging compromised the matter with defendant. Now, instant application has been filed under section 151 CPC for restoration of said suit, while stating that, as per oral compromise effected between the parties, entire amount has not been paid to plaintiff by defendant. So, main suit be restored and proceedings be taken further, as required under law.

On the afore-said factual position, law has well been settled in judgment titled **Kuldeep Singh vs. Virender Singh**, reported in 2014 (2) CCC 532 (P&H) on the point that, restoration of suit, dismissed as withdrawn on account of oral compromise between the parties- withdrawal of suit without permission to file on the same cause of action may be mistake or the wrong advice of counsel-held, when situation is such, then court is not powerless to order restoration specifically when no prejudice would be caused to anyone specially the defendants-restoration of suit allowed.

Here, it has been observed that, in the main suit, defendant was never served. Undisputedly, original suit was dismissed as withdrawn on the basis of alleged compromise, but, alleged amount has not been paid, as per the oral compromise. Moreover, respondent despite

his due service in this application, didn't appear to contest or rebut it. Being it so, application in hand stands allowed under section 151 CPC and civil suit no.129 dated 24.12.2013, decided on 06.10.2014 titled Hansa Singh vs. Chander kant is ordered to be restored to its original position. Notice to defendant/ respondent be issued through RC as well as through ordinary mode for 21.08.2017.”

Learned counsel for the petitioner/defendant further submits that there was a delay of about 01 year and 10 months in moving the aforesaid application for restoration of the suit, therefore, the trial Court has wrongly allowed the said application restoring the suit.

It is further submitted that before passing the impugned order, the trial Court has not properly served the defendants and no right was reserved by the plaintiff to restore the suit.

Learned counsel for the respondent/plaintiff submits that since the compromise was not adhered to by the petitioner/defendant as only Rs. 20 Lakh as part payment was paid to the plaintiff, therefore, he has moved the aforesaid application.

Learned counsel for the respondent/plaintiff has relied upon ***2006(2) RCR (Civil) 593, Jet Ply Wood Private Ltd. & Anr. vs. Madhukar Nowlakha & Ors.***, wherein Hon'ble Supreme Court has framed the question with regard to restoration of the suit in para 12, which reads as under”

“It will be evident from the facts mentioned hereinabove that the only question to be decided in these appeals is whether the learned Single Judge of the Calcutta High Court acted within his jurisdiction in restoring the suit of the Respondent No. I when the same had been withdrawn by the said Respondent without any specific prayer for

leave to file a fresh suit on the same cause of action. In other words, we are required to consider whether having regard to the provisions of Order XXIII Rule 1 of the Code of Civil Procedure, the Learned Single Judge of the Calcutta High Court could restore the suit when no leave had been granted to file a fresh suit.”

Hon'ble Supreme Court, while deciding the above question, has observed as under:

“As indicated hereinbefore, the only point which falls for our consideration in these appeals is whether the Trial Court was entitled in law to recall the order by which it had allowed the plaintiff to withdraw his suit.

From the order of the Learned Civil Judge (Senior Division) 9th Court at Alipore, it is clear that he had no intention of granting any leave for filing of a fresh suit on the same cause of action while allowing the plaintiff to withdraw his suit. That does not, however, mean that by passing such an order the learned court divested itself of its inherent power to recall its said order, which fact is also evident from the order itself which indicates that the Court did not find any scope to exercise its inherent powers under Section 151 of the Code of Civil Procedure for recalling the order passed by it earlier. In the circumstances set out in the order of 24th September, 2004, the learned trial court felt that no case had been made out to recall the order which had been made at the instance of the plaintiff himself. It was, therefore, not a question of lack of jurisdiction but the conscious decision of the Court not to exercise such jurisdiction in favour of the plaintiff.

The aforesaid position was reiterated by the learned Single Judge of the High Court in his order dated 4th February, 2005, though the language used by him is

not entirely convincing. However, the position was clarified by the learned Judge in his subsequent order dated 14th March, 2005, in which reference has been made to a bench decision of the Calcutta High Court in the case of Rameswar Sarkar (supra) which, in our view, correctly explains the law with regard to the inherent powers of the Court to do justice between the parties. There is no doubt in our minds that in the absence of a specific provision in the Code of Civil Procedure providing for the filing of an application for recalling of an order permitting withdrawal of a suit, the provisions of Section 151 of the Civil Procedure Code can be resorted to in the interest of justice. The principle is well established that when the Code of Civil Procedure is silent regarding a procedural aspect, the inherent power of the court can come to its aid to act ex debito justitiae for doing real and substantial justice between the parties. This Court had occasion to observe in the case of ***Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal***, AIR 1962 SC 527, as follows:

"It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them."

Based on the aforesaid principle, the Division Bench of the Calcutta High Court, in almost identical circumstances in Rameswar Sarkar's case, allowed the application for withdrawal of the suit in exercise of inherent powers under Section 151 of the Code of Civil Procedure, upon holding that when through mistake the plaintiff had withdrawn the suit, the Court would not be

powerless to set aside the order permitting withdrawal of the suit.

We are of the view that the law having been correctly stated in the aforesaid case, the learned Single Judge of the Calcutta High Court in making an order on the same lines did not commit any error of jurisdiction which calls for any interference in these appeals.”

Learned counsel for the respondent/plaintiff further submits that when the suit was restored, even at that stage, from the date of cause of action (as the application was moved within a period of three years), the suit was within limitation period of three years.

After hearing learned counsel for the parties, no ground is made out to set aside the impugned order as this Court does not find any illegality or infirmity in the same.

Accordingly, the present petition is dismissed.

26.07.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>