

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

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2023:PHHC:148498

CR-252-2016

Date of decision: 22.11.2023

NIRBHAI SINGH

..Petitioner

Versus

ROMMY KUMAR AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

Mr. Chandandeep Singh, Advocate
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

1. The correctness of the order passed by the trial Court on 19.11.2014, while dismissing the plaintiff's application for restoration of the case is challenged in this revision petition. The plaintiff filed a suit for grant of decree of declaration to the effect that sale deed dated 16.08.2005, executed by the defendant No.1 in favour of defendant No.2 acting as a Special Power of Attorney of the plaintiff dated 13.04.2005, is without any authority and not binding on the rights of the plaintiff. The suit was filed on 12.03.2010. Initially, the suit was dismissed in default on 07.11.2011, however, it was restored on 09.11.2011, after the Court realized its mistake. Thereafter, once again the suit was dismissed in default on 18.07.2012. It is the case of the plaintiff when the case was called for hearing, he went to the office of the advocate to call him, however, his lawyer was busy in some other case and when the counsel appeared in the post-lunch session, the suit had been dismissed in default by the trial Court.

2. On 04.08.2012 i.e. within a period of 15 days from the date the suit was dismissed in default, the application for restoration was filed.

However, the said application was also dismissed in default on 15.01.2014, which was subsequently restored on 23.01.2014. Now the Court has dismissed the petitioner's application for restoration of the suit while recalling order dated 18.07.2012. The Court has observed that the application has been filed within the period of limitation. The learned counsel representing the petitioner contends that the trial Court has erred in dismissing the application by only taking into account the conduct of the plaintiff without realizing that on 07.11.2011, the suit was dismissed in default due to the mistake of the Court. He further submits that the restoration application should not have been dismissed only because the lawyer representing the plaintiff was busy in some other Court.

3. On the other hand, the learned counsel representing the respondent submits that the plaintiff is not serious in prosecuting the suit.

4. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

5. The Courts are expected to decide the litigation after examining the evidence led by the parties on merits. The dismissal of the suits on account of default should fall in the category of exceptions. The Courts are expected to make a sincere endeavour for the disposal of litigation after considering the merits of the case. In this case, the trial Court erred in failing to consider that the order dated 07.11.2011, was recalled by the Court after realizing it's mistake. Moreover, the application for restoration was filed within the period of nearly 15-16 days. The dispute in question relates to the immovable property. As per the memo of parties, the petitioner is a resident of the United Kingdom. In such circumstances, it is difficult for

the petitioner to supervise the progress of the litigation on each and every date of hearing.

6. Keeping in view the aforesaid facts, the order dated 19.11.2014 is set aside. The suit is restored to its original number, subject to the condition that the plaintiff shall file an affidavit undertaking that either he or his counsel will continue to appear in the Court without fail, within a period of 15 days, from today, positively.

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

November 22nd, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*