

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

**CR-3491-2006 (O&M)
Date of decision:29.09.2023**

Jagteshwar Singh & another

... Petitioners

Vs.

Sukhjit Kaur & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Ajay Jain, Advocate for the petitioners.

Mr. Tarun Singla, Advocate (legal aid counsel),
for the respondents.

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SUKHVINDER KAUR, J.

1. The instant revision petition has been directed against the order dated 18.05.2006 passed by the Additional Civil Judge (Sr. Division), Jalandhar, vide which the application filed by the petitioners for restoration of the suit has been dismissed and the order dated 20.04.2005 passed by the Additional Civil Judge (Sr. Division), Jalandhar vide which the suit for declaration filed by the petitioners had been dismissed in default.

2. The brief facts as per the revision petition are that the petitioners/plaintiffs filed a suit for declaration to the effect that they are owners in possession of the estate left by Dilbag Singh s/o Gurbachan Singh situated in village Dhilwan, Tehsil and District Jalandhar as per Will dated 27.12.1991 executed by Dilbag Singh in their favour and also sought permanent injunction for restraining the defendants/respondents from alienating the suit property as detailed in the head note of the plaint, in any manner whatsoever. Notice of the suit was given to the

respondents/defendants. They appeared and filed written statement. Replication to written statement was also filed by the petitioners. An application for ad interim injunction was also filed by the petitioners and ad interim was granted in favour of the petitioners. The proceedings of the suit were going on before the trial Court and the same were fixed for adducing evidence by the petitioners.

3. It has been alleged that lastly the case was adjourned to 20.04.2005 by the trial Court. On 20.04.2005 when none appeared on behalf of the plaintiffs/petitioners then the said suit was dismissed under Order 9 Rule 8 of the Code of Civil Procedure vide order dated 20.04.2005 passed by the trial Court.

4. Thereafter, an application for restoration of the suit was filed by the petitioners on 20.05.2005 alleging that the petitioners/applicants had noted down the wrong date as 20.05.2005 instead of 20.04.2005 and as such they could not appear before the Court. It was also alleged that counsel for the applicants could not appear before the Court on 20.04.2005 as he was busy in Sessions Court when the case was called. It was submitted that they came to know about the dismissal of the suit in default on 20.05.2005, when they came to attend the Court and then the application for restoration was filed.

5. The trial Court dismissed the application for restoration vide impugned order dated 18.05.2006 against which the present revision petition has been preferred.

6. It has been contended by learned counsel for the petitioners that their non-appearance was due to inadvertent mistake as the date was

wrongly noted down as 20.05.2005 instead of 20.04.2005. So non-appearance of the petitioners on the date fixed was not intentional or malafide, rather it was a bonafide mistake. He has contended that sufficient and genuine reasons were given in the application for restoration of the suit which was accompanied by an affidavit. The respondents also did not choose to contest the said application and were proceeded against ex-parte. But even then the trial Court without considering the pleas raised by the petitioners and without adhering to law, dismissed the said application vide the impugned order dated 18.05.2006, which is not sustainable in law. He has further contended that it has been wrongly observed by the trial Court that the suit was got dismissed in default intentionally by the petitioners as well as their counsel, as they were unable to produce any evidence and they wanted to gain some more time. The said observation is without any basis. Even the application for restoration was filed within 30 days of the dismissal of the suit. He has also contended that since the main suit was filed for declaration of ownership on the basis of a Will, so valuable rights of plaintiffs would be effected if the suit is not restored and the *lis* is not decided on merits. He has further submitted that now the case is complete and only the evidence is to be led by the parties and in case the petitioners are granted adequate opportunity to lead evidence then the petitioners undertake to lead the same without wastage of time and are also ready to compensate the respondents and has prayed that the present revision petition may be allowed.

7. On the other hand, it has been contended by the learned counsel for the respondents that in the grounds of appeal, a contradictory plea has

been taken that learned counsel for the petitioners had inadvertently noted down the wrong date whereas in the restoration application, it has been alleged that the petitioners had wrongly noted down the date and counsel for the petitioners could not appear before the trial Court being busy in the Sessions Court. He has contended that the trial Court has rightly held that as the petitioners were unable to adduce any evidence despite availing of seven opportunities, so they got the suit dismissed in default as they wanted to gain some more time. He has strenuously contended that it was just a delaying tactics and no sufficient cause is made out for restoration of the suit. He has further contended that the impugned order is a detailed/elaborate order showing the conduct of the petitioners and does not call for any interference.

8. Perusal of the impugned order reveals that it has been held by the trial Court that the case remained pending for evidence of the plaintiffs from the year 2002 till the dismissal of the suit in default. The plaintiffs did not adduce any evidence even after availing seven opportunities and ultimately, when it was the last opportunity and learned counsel for the plaintiffs realized that he might not get any further adjournment, an application for staying the proceedings of the suit was filed on 24.02.2004. But despite availing of three opportunities, the plaintiffs did not produce any document regarding the other suit pending in the Court at Chandigarh. Then on 21.03.2005, learned counsel for the plaintiffs made a request before the trial Court that his party could not get the documents and case might be fixed for evidence of the plaintiffs. However, on the next date when it was the last opportunity for evidence of the plaintiffs, neither the plaintiffs nor their counsel appeared before the trial Court and the Court was left with no

other option but to dismiss the suit in default under Order 9 Rule 8 CPC. It has been observed by the trial Court that these facts show that the plaintiffs were not pursuing the case with due diligence and were adopting delaying tactics and it was held that there was no ground for recalling the order vide which the suit was dismissed in default. It was further held that the plea raised by the plaintiffs does not appear to be plausible as their counsel had noted down the correct date i.e. 20.04.2005 and in such like circumstances, it cannot be accepted that the plaintiffs had noted down the wrong date.

9. As is revealed from the perusal of the application for restoration moved by the petitioners, it has been alleged therein that the absence of the petitioners before the trial Court was due to the fact that the petitioners had inadvertently noted down the wrong date as 20.04.2005 instead of 20.05.2005 and their counsel also could not appear before the trial Court as he was busy in the Sessions Court. But in the grounds of appeal taken in the present revision petition, a contradictory plea has been taken that the wrong date had been noted down by the counsel for the petitioners, hence he could not appear before the trial Court on 20.04.2005 when the case was dismissed in default. It has been alleged that non-appearance of the petitioners had occurred due to bonafide mistake as a wrong date was noted down by the counsel and as per settled proposition of law, a party should not be made to suffer due to fault of his counsel.

10. Though, there is a contradiction regarding the fact of wrongly noting down the date by the petitioners or their counsel, yet from the initial stage, this plea has been taken by the petitioners that the non-appearance was due to bonafidely noting down the wrong date.

11. Order IX Rule 9 CPC deals with “Appearance of the parties and consequence of the non-appearance. This provision provides for restoration of suits dismissed under Order IX Rule 8 for non-appearance. When once a suit is dismissed wholly or partly, the plaintiff is precluded from bringing a fresh suit in respect of the same cause of action, however, Rule 9 permits for filing of an application to set aside the dismissal order. As per Order IX Rule 9 CPC for allowing an application for restoration of the suit “sufficient cause” must be shown to the satisfaction of the Court for non-appearance when the suit was called.

12. In **M/s Kiran Krishna Real Estates and Constructions (P) Limited Vs. P.V.A. Prasad (Andhra Pradesh), 2023 (3) ALT 68**, it has been held that “the satisfaction of the Court on the “sufficient cause” is the crux in deciding restoration applications under Order IX Rule 9. It is reiterated as a principle of law that Order IX Rule 9 being procedural in nature, “sufficient cause” should receive a liberal consideration as an elastic expression in order to do substantial justice rather than being struck on technical rigidities.”

13. In the instant case this fact is to be noted that the application for restoration was filed within 30 days after the suit had been dismissed in default. Thus, the application for restoration was moved without any delay. In the case supra also it has been held that “in a case where the party approaches the Court immediately within the statutory time prescribed for recourse, the discretion needs to be exercised in his favour, provided the absence was not with any malafide intention.”

14. The Apex Court in **Collector Land Acquisition, Anantnag &**

another Vs. Mst. Katiji & Ors, AIR 1987 SC 1353 while considering the scope of Order 9 Rule 9 took the view that while considering the expression 'sufficient cause' legislature has intended to use it as an elastic expression so as to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. According to the Court, a liberal approach ought to have been made to understand the 'sufficient cause' as to the absence of the petitioner on the date of dismissal of the suit for default. Court felt that for ends of justice, an opportunity may be given to the petitioner to contest the main case on merit.

15. Thus the 'sufficient cause' is an elastic expression for which no hard and fast guidelines could be given. In **Pokku Vs. Ammini, 1987 (2) KLT 308**, it has been held that “the nature of the claims or contentions and the effect which the decision of the case is having on the rights of parties cannot be ruled out as absolutely foreign to the area of consideration under any circumstances.”

16. It is broad principle of natural justice that the right of a party to be heard should be negated only if there is gross negligence or carelessness and if some steps have been taken and application for restoration has been made with some diligence making out sufficient cause then the restoration should be ordered.

17. Now advertent to the case in hand, the main suit had been filed for declaration of ownership on the basis of a Will and as such valuable rights of the parties are involved. Absence of a party on the date of hearing may lead to delaying the disposal of the matter but the other side can be compensated with adequate cost and it is in the interest of justice that *lis* is

decided on merits.

18. In the light of the above, this revision petition is allowed and the impugned order under revision is set aside. The application for restoration is allowed subject to a cost of Rs.5000/- to be paid to the respondents. The petitioners/plaintiffs will be granted only two effective opportunities for concluding their evidence and the trial Court is directed to decide the suit expeditiously, preferably within a period of six months from the date of receipt of a certified copy of this order.

19. All pending applications, if any, also stands disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

29.09.2023
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |