

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

Civil Revision No. 4532 of 2018(O&M)

Date of Decision: 26.07.2023

Bhim Sain

...Petitioner

Versus

Ram Singh

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Vishal Sharma Haritwal, Advocate
For the petitioner.**

**Mr. Suman Sagar, Advocate
For the respondent.**

KARAMJIT SINGH, J.

1. This revision petition has been filed by petitioner/ defendant for setting aside impugned judgment and decree dated 18.12.2010 (Annexure P-1) passed by the Court of Additional Civil Judge (Sr.Divn.), Fatehabad and order dated 01.02.2014 (Annexure P-2) and another order dated 27.03.2018 (Annexure P-3) passed by Additional District Judge, Fatehabad.

2. The brief facts of the case are that respondent/ plaintiff filed suit for specific performance of agreement to sell dated 29.08.2008 against the petitioner/ defendant and the said civil suit was decreed *ex-parte* against the petitioner vide judgment dated 18.12.2010 (Annexure P-1). Being aggrieved, petitioner filed appeal against the said judgment and decree in the Court of Additional District Judge, Fatehabad and the said appeal was dismissed in default on 01.02.2014 vide order Annexure P-2. Thereafter, petitioner filed an application for restoration of the said appeal but the said application was dismissed by the Court of Additional District Judge,

Fatehabad vide order dated 27.03.2018 (Annexure P-3) on the ground that the said application was moved after about 32 months of the dismissal of appeal.

3. The counsel for the petitioner while challenging the aforesaid orders submits that *ex-parte* decree passed by the Court of Addl. Civil Judge(Sr.Divn.) is totally illegal as no issues were framed by the learned trial Court and as such the findings given by the said Court while passing the said *ex-parte* judgment/ decree are not sustainable. The counsel for the petitioner further submits that the petitioner filed appeal against the *ex-parte* judgment and decree dated 18.12.2010 but due to some compelling circumstances the petitioner/ his counsel failed to appear in the said appeal on 01.02.2014 and consequently appeal was dismissed in default on the same very day vide order Annexure P-2. That when the petitioner came to know about order (Annexure P-2), he immediately approached the Appellate Court for restoration of the appeal but his application was declined by the Court concerned without taking into consideration the fact that there was sufficient cause for the absence of the appellant when the appeal was dismissed in default.

4. The present petition is resisted by counsel for respondent who while supporting the *ex-parte* judgment/ decree (Annexure P-1) and impugned orders (Annexure P-2 and P-3) submits that there is no illegality in the aforesaid *ex-parte* judgment and orders and that the present petition is devoid of merits.

5. I have considered the submissions made by counsel for the parties.

6. From the perusal of the impugned *ex-parte* judgment (Annexure P-1) and impugned orders (Annexures P-2 and P-3) it is apparent that the petitioner took the notice issued by the Court as well as the Court proceedings in a casual manner. Firstly, he was proceeded against *ex-parte* in the civil suit filed by respondent against him on the basis of agreement to sell dated 29.08.2008 and the learned trial Court passed *ex-parte* judgment/decree dated 18.12.2010 against the petitioner. Being aggrieved, petitioner filed civil appeal against the said *ex-parte* judgment/ decree, but the same was dismissed in default on 01.02.2014 as the petitioner/ his counsel failed to appear before the Appellate Court on that date. Thereafter, petitioner filed application on 29.09.2016 seeking restoration of said appeal. It could be easily made out that the said application for restoration of appeal was filed after more than two and a half years of the dismissal of appeal. The petitioner is unable to explain said inordinate delay in filing application for restoration of appeal. The Appellate Court while dismissing the restoration application moved by the petitioner, rightly observed that such like case/ appeal could not be restored as a matter of course. Consequently, no ground is made out for interference under Article 227 of Constitution of India.

7. The petition stands dismissed.

26.07.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No