

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CR-5175-2015

Date of decision: 09.08.2023

Gurbax Singh and Anr.

....Petitioners

Versus

Balihar Singh and Anr.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. B.S.Khehar, Advocate for the petitioners.

Mr. Sanjay Jain, Advocate for respondent No.1.

AMARJOT BHATTI, J.

1. The petitioners – Gurbax Singh now represented through LRs and Gurcharan Kaur have filed revision against impugned order dated 13.05.2015 vide which application for restoration of suit was dismissed by learned Civil Judge (Junior Division), Ambala.

2. The learned counsel for the petitioners argued that the plaintiffs had filed suit for declaration in which the respondent No.1 had filed written statement whereas respondent No.2 was ex parte. The case was fixed for plaintiff evidence. He used to appear on each and every date of hearing. On 10.05.2010, he was present in the Court to attend the proceedings. He could not come inside the Court due to his problem of hard of hearing. At about 2:10 PM when the clerk went inside the court room he came to know that his case was dismissed in default on account of his non appearance. There was no intentional absence on his part. Thereafter, he suffered fracture and remained under severe pain.

Ultimately, he filed application for restoration of suit on 27.05.2010 which is Annexure P-1. Without considering the facts and circumstances of the case, the said application was dismissed vide impugned order dated 13.05.2015 (Annexure P-2). It is argued that Gurbax Singh has now expired and the present petition is filed through his legal heirs. The application for restoration of suit was filed within a period of 25 days. It is prayed that material rights of the present petitioner are to be decided in the said civil suit. Therefore, the same may kindly be restored by accepting the present revision.

3. The application is opposed by learned counsel for the respondent taking the stand that the case was fixed for plaintiff evidence since long. On that day i.e. 10.05.2010 he was given last opportunity to conclude his evidence. Therefore, deliberately he did not attend the court proceedings. As such, the court was left with no other alternative but to dismiss the same for want of prosecution. Therefore, the impugned order dated 13.05.2015 passed by the Court of Civil Judge (Junior Division), Ambala does not require any interference.

4. I have considered the arguments and have gone through the record carefully. Admittedly, the present petitioner i.e. Gurbax Singh now represented through LRs and his wife Gurcharan Kaur had filed civil suit for declaration which was dismissed on 10.05.2010 when it was fixed for plaintiff evidence. For the restoration of this suit the application was filed well within the period of limitation on 05.06.2010. The learned Court of Civil Judge (Junior Division), Ambala led emphasis on the point that on that day the plaintiff was given last opportunity to conclude evidence, therefore, the absence on his part was intentional. I have considered this

aspect of the present case. Once the application for restoration of suit was filed within the period of limitation it would have been appropriate to restore the same by imposing reasonable cost. It is always in the interest of justice to dispose of the case on merits. The present petitioner was an old man, therefore, it is possible that he could not hear when the case was called. He came to know about the dismissal of the suit when the clerk went to the Court after the lunch break and thereafter, the application for restoration was also filed within the reasonable time. So far as the recording of evidence and the proceedings of the case are concerned, it is the trial Court to see how many opportunities are to be given to conclude the evidence. The court has ample power to close the evidence or to decide the case forthwith as per the provisions of CPC but at the same time the case is required to be decided on merits. Therefore, considering these facts, the civil revision filed by the present petitioners is accepted and the impugned order dated 13.05.2015 is accordingly set aside and the case is restored to its original number. The learned trial Court is directed to decide the case on merits expeditiously.

Accordingly, the present civil revision stands disposed of.

09.08.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No