

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

CR No. 7252 of 2016

DATE OF DECISION :- February 06, 2023

Partap and another

...Petitioners

Versus

Jeeta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Kulbhushan Sharma, Advocate for the petitioners.

Feeling aggrieved by the order dated 19.10.2016 passed by Additional District Judge, Faridabad vide which he had dismissed the application for restoration of appeal, the petitioners have approached this Court by way of filing the present revision petition.

Briefly stated the facts of the case are that appeal titled 'Partap and another Vs. Jeeta and others' was assigned to the Court of Additional District Judge, Faridabad. On 18.10.2016 since there was no representation on behalf of the appellants, the appeal was dismissed in default. On the very next date an application for restoration of appeal was filed on behalf of the appellants for the reasons that non appearance of the appellants/their counsel was not intentional or wilful but for the reason that counsel for the appellants was held up on Delhi and he had requested Sh. Surinder Dhankar, Advocate to appear on his behalf and to make a request for adjournment. Sh. Surinder Dhankar, Advocate had appeared in the Court and informed the Reader at 11.00 A.M when he was told that case shall would be recalled. When Sh. Surinder Dhankar, Advocate appeared in the Court at 1.45 P.M he was informed that appeal was dismissed in default for non appearance of appellants/their counsel as well as non-prosecution. Therefore, the appeal be restored at its original

number. The application was supported by affidavit of Sh. Surinder Dhankar, Advocate, however, that application was dismissed by Additional District Judge, Faridabad on 19.10.2016 itself leaving the appellants aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was given to respondents, who were duly served but did not opt to put in appearance.

I have learned counsel for the petitioners besides going through the record.

I find that the impugned order does not stand judicial scrutiny and is liable to be set aside. It is to be taken note of that the appeal was dismissed in default for non appearance of appellants/their counsel as well as non-prosecution on 18.10.2016 and on the very next day an application for restoration of the appeal had been filed giving reasons which seem to be plausible and satisfactory. However, learned Additional District Judge, Faridabad by adopting a hyper technical approach giving unconvincing reasons had dismissed the application not considering the Principle of law that a lis should be preferably decided on merits rather than non-suiting an applicant on technical reasons.

Therefore, the order under revision is set aside by way of acceptance of revision petition and appeal is ordered to be restored at its original number. The appeal shall proceed from the state when it was dismissed for non-prosecution/non appearance of the appellants vide impugned order.

(H.S. MADAAN)
JUDGE

February 06, 2023

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No