

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2130-2023 (O&M)

Date of Decision : 30.05.2023

Anuraj

....Petitioner

VERSUS

M/s Vikram Electric Equipment (Pvt.) Ltd.

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rakesh Gupta, Advocate for the petitioner.

Mr. Tushar Sharma, Advocate for the respondent.

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ALKA SARIN, J. (Oral)

1. The limited challenge in the present revision petition filed under Article 227 of Constitution of India is to the order dated 24.02.2023 whereby the application for restoration of an earlier application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for setting aside the ex-parte judgment and decree dated 07.11.2014, which was dismissed in default on 25.08.2022, has been dismissed.

2. Learned counsel for the petitioner has contended that due to a wrong noting of the date by the counsel, he could not appear and the application filed for restoration of the application under Order IX Rule 13 read with Section 151 CPC was dismissed vide the impugned order dated 24.02.2023. Learned counsel has further contended that the petitioner is ready to compensate the respondent by way of costs.

3. *Per contra*, learned counsel appearing on behalf of the respondent has contended that the conduct of the petitioner needs to be seen.

The suit was filed in the year 2009 and that the decree was passed in the year

2014. Thereafter, execution was filed by the respondent in the year 2016 and application for setting aside judgment and decree dated 07.11.2014 was filed on 02.11.2019. It is further the contention that the application was also dismissed in default on 25.08.2022 and hence the order dated 24.02.2023 cannot be faulted with.

4. I have heard learned counsel for the parties.

5. In the present case the application for restoration has been dismissed due to non-appearance of the counsel. Learned counsel for the petitioner has contended that the counsel could not come present due to wrong noting of date. It is trite that the parties cannot be made to suffer because of the fault of the counsel. In order to do complete justice between the parties, the present revision petition is allowed. The impugned order dated 24.02.2023 is set aside and the application for restoration dated 23.09.2022 (Annexure P-2) is allowed. The application under Order IX Rule 13 read with Section 151 CPC (Annexure P-7) is restored to its original number and status, subject to payment of Rs.20,000/- as costs to be paid to the respondent. Pending applications, if any, also stand disposed off.

May 30, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO