

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 2700 of 2019****Date of Decision: 01.12.2023**

Jaspreet Singh and Another

... Petitioner(s)

Versus

Sharda Devi

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Manmeet Singh Rana, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. Despite service of the notice to the respondent through publication in the newspaper, she remains unrepresented.
2. Heard the learned counsel representing the petitioners at length and with his able assistance, perused the paper-book.
3. The plaintiff (petitioner herein) filed a suit for symbolic possession by way of specific performance of the agreement to sell. The suit was dismissed in default on 07.11.2017, under Order IX Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). On 06.10.2018, the suit was restored to its original number subject to the payment of costs of ₹1,000/- in the District Legal Services Authority. On 15.10.2018, the trial Court passed the following order:-

*"Today the case was fixed for payment of cost of Rs.
1000/- imposed upon the plaintiff in pursuance to order of
restoration of the suit."*

Today case called several times. However, none has Come present on behalf of plaintiff. Even the cost imposed on last date has not been paid. It seems that the plaintiff is not interested in pursuing the present suit as such the present suit stands dismissed u/s 9 Rule 2 CPC. File be consigned to judicial record room Phagwara.”

4. It is the case of the plaintiff that as per the information available on the court’s website, the hearing of the case was adjourned to 14.11.2018, and the application for restoration was allowed. He has produced a printout of the case details. The plaintiff filed an application for restoration of the suit on 03.12.2018, which was dismissed on 14.02.2019, on the ground that it has been filed beyond the prescribed period of limitation.

5. This Court has considered the submissions of the learned counsel representing the petitioner.

6. In the considered view of this Court, the trial Court has taken a hyper technical view while dismissing the application. The proceedings of the trial Court suffer from multiple errors. As is evident, on 15.10.2018, the trial Court dismissed the case on the ground that none is present on behalf of the plaintiff. However, in the presence sheet, the presence of the learned counsel is noted. It is evident that Mr. Varun Kumar Wadhawan, Advocate, was present on behalf of the plaintiff. Hence, on 15.10.2018, the trial Court has wrongly dismissed the case for non-prosecution.

7. Moreover, the trial Court failed to take note of the fact that on the court website, the hearing of the case was reflected as 14.11.2018.

Hence, the cause of action, if any, for the restoration of the suit would arise

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on 14.12.2018. The application was filed on 03.12.2018. The limitation period for filing an application for restoration will begin to run from 14.11.2018.

8. Furthermore, while filing the application on 03.12.2018, the petitioner disclosed the facts in the application. Even if it is assumed that the application was filed after the prescribed limitation period, still the assertions made in the application for restoration were sufficient to condone the delay. It is not necessary that an application for condonation of delay should be filed.

9. Keeping in view the aforesaid facts, the present revision petition is allowed. The impugned order dated 14.02.2019, is set aside. The suit is restored at its original number. The plaintiff is directed to appear before the trial Court on 19.12.2023. Thereafter, the trial Court will issue notice to the respondent.

(Anil Kshetarpal)
Judge

December 01, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No