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

CR-2720-2019 (O&M)
Date of decision: 09.02.2023

MST. JANO

...Petitioner

VS

FATEH DIN AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Anil Kumar Garg, Advocate,
For the petitioner.

None for the respondents.

ARUN MONGA, J. (ORAL)

Revision petition is directed against order dated 25.01.2019 (Annexure P-4) passed by learned Additional District Judge, Sangrur dismissing the application for restoration of an appeal dismissed in default, *inter alia* on the ground of being beyond limitation.

2. Petitioner filed a suit for declaration and permanent injunction against the respondents which was dismissed by learned Trial Court vide judgment and decree dated 06.11.2012. Feeling aggrieved, petitioner filed an appeal, which was dismissed in default on account of non-appearance vide order dated 05.08.2015. Petitioner pleads that she was never informed about the above said order and she remained under the impression that her case is being persuaded by her counsel. Later, petitioner contacted another counsel, who informed her

that her appeal was dismissed in default on 05.08.2015. She then immediately filed an application for restoration of the appeal. Notice of the application was sent to respondents but only respondent No.1 appeared to contest the application. Learned Additional District Judge, Sangrur dismissed the application filed by petitioner on the ground that there is a delay in filing the application and no separate application has been filed by the petitioner for condoning the delay. Hence, the instant petition.

3. None appears in the present proceedings on behalf of respondents, despite service. Learned trial Court vide impugned order dated 25.01.2019 (Annexure P-4) seems to have got unduly swayed with the fact that restoration of the appeal was sought after one year and that too without there being any plausible reasoning and therefore, petitioner did not deserve any indulgence. Though learned Appellate Court while not restoring the appeal of petitioner rightly observed that in the matters of condonation of delay, a liberal approach ought to be adopted provided, of course, sufficient cause is made out.

4. Having seen the application seeking restoration of the appeal, I am of the view that since appellant-petitioner herein is an illiterate lady being oblivious of the legal niceties as well as being totally dependent on the legal advice of the advocate hired by her. Poor, illiterate and rustic old lady was under the *bona fide* impression that her case was being pursued by learned counsel engaged by her and as and when her personal presence would be required, he would inform her about the same. It was only when she did not receive any instructions

from him for a long time, she engaged another counsel, who upon making inquiries intimated her that her case had been dismissed in default. For ready reference, the relevant of the contents of the application for seeking restoration is reproduced herein below:-

“2. That at the time of filing the appeal, the counsel of the appellant told the applicant that he will call the appellant when the presence of the applicant is required. After passing the time, the counsel of the appellant was not called, then the applicant/appellant went to meet her counsel at Sangrur on 25.07.2016, but her counsel could not meet (?) her, then the applicant met to another counsel and her counsel inspect the case file and he told the applicant that her case earlier was dismissed (?) in default on 05.08.2015 due to the non-appearance of her earlier counsel. So, the present application is being filed without any delay.

3. That the case/appeal is initial stage, the respondent/defendant has no prejudice if the appeal is restored.”

5. According to learned counsel, impugned orders have resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner may be permitted to participate in the proceedings, in the interest of justice and equity.

6. Having heard learned counsel for the petitioner and for the reasons stated in the petition as well as also same being unopposed since none has appeared despite service, it appears that the contents thereof are uncontroverted and in any case, no prejudice would be caused to respondents in case appeal is heard on merits, which was dismissed in default owing to the mistake of learned counsel.

7. In the premise, revision petition is allowed. Impugned orders dated 25.01.2019 (Annexure P-4) and 05.08.2015 are set aside.

Parties to appear before learned First Appellate Court on 12.04.2023.

Learned counsel for petitioner to inform the learned counsel for respondents representing them before learned First Appellate Court.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 09, 2023
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No