

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

(117)

CR-2659-2023

Date of Decision : May 03, 2023

Dipti

.. Petitioner

Versus

Amit Kumar

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Himanshu Jawa, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

Present petition has been filed challenging the order dated 01.03.2023 (Annexure P-1) passed by the Family Court, Gurugram by which, application filed under Order 9 Rule 4 of the CPC for restoration of the case, which was dismissed for non-prosecution, has been dismissed.

Learned counsel for the petitioner submits that the application under Order 9 Rule 4 of the CPC has been dismissed on the ground that the same was filed beyond 30 days and there was no application under Section 5 of the Limitation Act for condonation of delay, hence, as the application for restoration of the suit was beyond the limitation, the same could not be decided on merits.

Learned counsel for the petitioner further submits that due opportunity should have been given to the petitioner to file an application

under Section 5 of the Limitation Act before dismissing the application under Order 9 Rule 4 of the CPC, as the case was dismissed for non-prosecution due to the circumstances which were beyond the control of the applicant-petitioner.

It may be noticed that it is the settled principle of law as well as it is in the interest of justice that the lis between the parties should be decided on merits as far as possible. The Court should have given an opportunity to the applicant-petitioner to file an application under Section 5 of the Limitation Act in case application filed under Order 9 Rule 4 of the CPC was beyond the limitation of 30 days.

Keeping in view the above, the order dated 01.03.2023 (Annexure P-1) is set aside. The application under Order 9 Rule 4 of the CPC is restored with liberty to the petitioner to file appropriate application for condonation of delay after which, the trial Court will be at liberty to pass appropriate orders keeping in view the facts and circumstances of the present case which will come on record.

The present civil revision petition is allowed in above terms.

As the present order is being passed without hearing the respondent, in case the respondent feels prejudice in any manner, the respondent will be at liberty to revive the present petition by filing appropriate application.

May 03, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No