

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2400-2020 (O&M)

Date of decision: 10.05.2023

Balvir Singh

...Petitioner

VS

Ajit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Arnav Sood, Advocate,
For the petitioner.

Mr. Surjit Singh Sodhi, Advocate,
For respondent No.1.

Mr. Himmat Singh, Advocate,
For respondents No.2 to 4.

ARUN MONGA, J. (ORAL)

Revision petition herein *inter alia* is to set aside impugned order dated 28.01.2020 passed by learned Civil Judge (Junior Division), Garhshankar, District Hoshiarpur, vide which the application for restoration of civil suit filed by petitioner/ plaintiff was dismissed.

2. Learned counsel for the petitioner submits that petitioner filed a civil suit for mandatory injunction to direct respondents No.1 to 3 to restore electricity connection of his motor/bore in order to irrigate his land and also seeking permanent injunction for restraining respondent No.1 from demolishing the hoze room, bore and removing electricity motor from the land in question. Suit of petitioner was dismissed in default for his non-appearance. He submits that his non-appearance was not intentional. Then petitioner filed an application for restoration of the civil suit citing the reasons for non-appearance.

2.1 Learned counsel for petitioner submits that the application filed by petitioner/plaintiff for restoration of his suit, which had been dismissed in default, has primarily been dismissed on a technical ground that the said application was not accompanied by an affidavit of plaintiff.

3. Learned counsels for the respondents strenuously oppose the revision petition and supports the impugned order dismissing the application of petitioner for restoration of his suit, being based on correct findings.

4. I have heard learned counsel for the parties and gone through the case file.

5. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. The provisions of procedure cannot be allowed to thwart real and substantial justice between the parties.

5.1. It transpires that application seeking restoration of his suit was dismissed summarily on the ground that same was not accompanied by certain affidavit. Assuming the same to be correct, learned Trial Court ought to have given an opportunity to petitioner to file the affidavit instead of summarily dismissing the application, as the same was a curable defect.

6. Being so, revision petition is allowed. Impugned order is set aside and petitioner is allowed to file fresh application along with the requisite affidavit, which will be decided by learned Trial Court on its merits.

7. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

10.05.2023
Vandana

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