

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2426 of 2020

Date of Decision : 10.03.2023

Gurubachan Singh (since deceased) through his Legal HeirsPetitioners

VERSUS

Paramjit Kaur

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay Lath, Advocate for the petitioners.

Mr. Sanjiv Gupta, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition has been preferred under Article 227 of the Constitution of India impugning the order dated 04.12.2019 (Annexure P-5) vide which the civil appeal filed by the petitioners was dismissed in default, and the order dated 08.10.2020 (Annexure P-10) vide which the application for restoration of the appeal was also dismissed.

The brief facts relevant to the present *lis* are that a suit for specific performance was filed by the plaintiff-respondent which was decreed vide judgment and decree dated 14.02.2017. Aggrieved by the judgment and decree of the Trial Court, the defendant-petitioners filed an appeal on 14.03.2017. Vide order dated 04.12.2019 (Annexure P-5) the appeal was dismissed in default since none had put in appearance on behalf of the defendant-petitioners. Subsequently, an application for restoration of the appeal was filed and vide the impugned order dated 08.10.2020 the said application has also been dismissed.

Learned counsel for the defendant-petitioners would contend that the counsel for the defendant-petitioners had not put in appearance on 29.10.2019 and the notice was issued to the defendant-petitioners who had contacted the lawyer and the lawyer had assured that he would appear on the next date of hearing. However, on the next date of hearing i.e. 04.12.2019, the lawyer did not appear and the appeal was dismissed in default. Learned counsel for the defendant-petitioners would further contend that there is no fault on the part of the defendant-petitioners and that the defendant-petitioners would be deprived of their valuable right of first appeal in case the appeal is not restored. Learned counsel for the defendant-petitioners has relied upon the judgments of the Hon'ble Supreme Court in the case of **The Commissioner, Mysore Urban Development Authority vs. S.S. Sarvesh, [2019 (1) RCR (Civil) 982]** to contend that in case the advocate does not appear, the Court should not deprive litigants of valuable right of prosecuting the case on merits. Further reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Harpal Singh & Ors. vs. Balwant Singh & Ors. [Civil Appeal No.69-71 of 2019 (arising out of SLP (C) Nos.8775-8777 of 2011 decided on 04.01.2019)]**.

Per contra learned counsel for the plaintiff-respondent has vehemently contended that the defendant-petitioners had deliberately not appeared and the order has rightly been passed dismissing the appeal in default. Further, the application for restoration of the appeal has also been rightly dismissed. He has further pointed out that the sale deeds have since been executed and the possession has been delivered to the plaintiff-respondent.

I have heard learned counsel for the parties.

It is trite that the first appeal is a matter of right. In the present case the first appeal preferred by the defendant-petitioners was dismissed in default vide order dated 04.12.2019. A perusal of the application (Annexure P-6) for restoration of the appeal reveals that sufficient reasons have been given for non-appearance on 04.12.2019. Hon'ble Supreme Court in the case of **The Commissioner, Mysore Urban Development Authority** (*supra*) has held as under :

“19. Indeed, this case reminds us of the subtle observations of the learned Judge - Vivian Bose, J., which His Lordship made in one of the leading cases of this Court in Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425.

20. Vivian Bose J., speaking for the Bench, in his distinctive style of writing made the following observations while dealing with the case arising out of Order 9 and reminded the Courts of their duty while deciding the case. The observations are apt and read as under:

“A code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is

done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.”

21. Keeping the aforementioned statement of law in consideration and applying the same to the facts of this case, we have no hesitation in allowing this appeal and set aside the impugned order.”

Though the sale deeds have since been executed and the possession has been handed over to the plaintiff-respondent, to do complete justice to the parties, this Court deems it fit to allow the present revision petition and to give an opportunity to the defendant-petitioners to pursue the first appeal on merits. The present revision petition is accordingly allowed subject to payment of Rs.20,000/- as costs to be paid to the plaintiff-respondent. The impugned orders are set aside and the appeal filed by the

defendant-petitioners is restored. Parties to appear before the lower Appellate Court on 24.03.2023.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

10.03.2023
jk

**(ALKA SARIN)
JUDGE**

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