

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

CR-5049-2019 (O&M)

Reserved on: 30.05.2023

Date of pronouncement: 01.06.2023

Balwinder Singh

...Petitioner

Versus

The Improvement Trust, Ludhiana through its Chairman

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. C.K. Jha, Advocate for the appellant.

Ms. Deepali Puri, Advocate for the respondent.

H.S. MADAAN, J.

1. Being impugned in this revision petition are three orders, first being dated 19.11.2013 passed by Civil Judge (Jr. Divn.) Ludhiana, vide which the suit of the plaintiff had been dismissed in default, the second dated 18.07.2017 passed by Civil Judge (Jr. Divn.) Ludhiana, vide which an application of petitioner for restoration of civil suit had been dismissed and third dated 24.04.2019 passed by Addl. District Judge Ludhiana, vide which the appeal of the petitioner against those orders had been dismissed.

2. Briefly stated facts of the case are that a civil suit titled 'Balwinder Singh Vs. The Improvement Trust, Ludhiana and another' was pending in the Court of Civil Judge (Jr. Divn.) Ludhiana and it was fixed for 19.11.2013; on that day, there was no representation on behalf of the

plaintiff, though counsel for the defendant was present; after calling the case several times during the day and waiting upto 3.30 PM, when nobody turned up to put in appearance on behalf of the plaintiff, the suit was dismissed under Order 9 Rule 8 CPC; thereafter, the plaintiff filed an application under Order 9 Rule 9 read with Section 151 CPC for setting aside order dated 19.11.2013 and for restoration of the civil suit contending that an application for grant of ad-interim injunction filed by the plaintiff had been dismissed by the trial Court on 17.05.2011.

3. The plaintiff had challenged that order before District Judge, Ludhiana by way of filing an appeal, which was assigned to Addl. District Judge, Ludhiana; on 07.12.2011, the plaintiff had moved an application in the trial Court seeking amendment of the plaint; reply to that application was filed by the defendant on 14.01.2012 and such application was fixed for arguments on 08.02.2012; thereafter, on account of Presiding Officer being on leave, the application was adjourned to 03.04.2012; on that day, arguments on the application were partly heard and for remaining arguments, the case was adjourned to 24.04.2012, then to 04.05.2012, thereafter to 24.05.2012, 30.07.2012 to 03.09.2012 to 05.10.2012 to 08.11.2012 to 07.01.2013 and 19.01.2013 but remaining arguments were not heard on any such dates and no further date for arguments was fixed; in the meanwhile, the original file of the case was summoned by the Court of Addl. District Judge, Ludhiana; the file was sent there on 19.01.2013 and till 27.09.2013, the file remained there.

4. According to the applicant (attorney of plaintiff), she has been appearing in the trial Court as well as Ist Appellate Court regularly

and the impugned order dismissing the appeal had been passed without disposing of the application under Order 6 Rule 17 CPC; the applicant come to Court premises on 19.11.2013 to attend the date of hearing but suddenly at about noon, applicant Gurmaninder Kaur (attorney of plaintiff) got pain in her body; she informed her previous counsel in that regard, who asked her to go stating that he would attend the Court; accordingly, the applicant left the Court and went home and after few days of recovery, she contacted her previous counsel to know about next date of hearing and she came to know that the suit had been dismissed; she collected certain documents and changed the counsel and then filed the application on 26.09.2014 seeking restoration of the suit; along with said application, she had filed another application for condonation of delay of 88 days in filing the restoration application; both the applications were contested by the defendant/respondent and were dismissed by the trial Court, vide order dated 18.07.2017 (Annexure P-13).

5. The plaintiff had challenged those orders by way of filing an appeal but was unsuccessful inasmuch as her appeal was dismissed by Addl. District Judge, Ludhiana, vide order dated 24.04.2019 (Annexure P15). As such, she has knocked at the door of this Court by way of filing the present revision petition, notice of which was given to the respondent, who has put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record and I find that the revision petition is bound to fail. The revision petition as drafted and filed is not maintainable for the reason that the revision petitioner has challenged three different orders in

this revision petition, which is not permissible under law. The first order is dated 19.11.2013, vide which the suit of the plaintiff had been dismissed in default by the trial Court. The plaintiff had remedy of filing an application seeking restoration of that suit which she availed of, however, that application was dismissed. It being so, a revision petition against order was certainly not maintainable.

7. Similarly with regard to second order passed by Civil Judge (Jr. Divn.) Ludhiana, vide which an application for restoration of the civil suit had been dismissed. The revision petitioner had remedy of filing an appeal before District Court, which she had availed of, though, unsuccessful there, then how could the revision petition against that order is maintainable.

8. Similarly, the order passed by Addl. District Judge, Ludhiana has been wrongly tagged with two other orders passed by Civil Judge (Jr. Divn.) Ludhiana. Even the explanation given by the revision petitioner in not appearing before the trial Court when the suit was dismissed in default is not very convincing. The trial Court while dismissing the application for restoration of the suit has considered all the aspects finding that sufficient grounds do not exist for restoration of the suit and application for restoration of the suit had been filed on 26.09.2014 i.e. after more than 10 months of the dismissal. The application was hopelessly time barred.

9. Although, the plaintiff had filed an application for condonation of delay in filing of application for restoration but the applicant had sought condonation of delay of 88 days only when the

delay was for more than 10 months. Under Article 122 of the Limitation Act, limitation for filing an application for restoration of a suit is 30 days from the date of dismissal. The application was hopelessly time barred with no cogent and convincing reason being there, it was rightly dismissed by the trial Court and the order was upheld by the Ist Appellate Court. If the plaintiff does not appear in the Court when the case is called, the Court is justified in dismissing it for non-prosecution. In the revision petition, a lengthy story has been given with regard to dismissal of stay application by the trial Court, then plaintiff challenging that order before District Judge, Ludhiana filing an application for amendment of plaint etc., that does not have any relevance to the present controversy.

10. I find that there is no illegality or infirmity in the impugned orders. No interference therewith is called for by exercising revisional jurisdiction. Even otherwise, the revision petition is misconceived and is not maintainable. Therefore, the same stands dismissed.

01.06.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No