

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-4852-2019 (O&M)

Date of decision: 14.02.2023

Mahavir & Others

...Petitioner(s)

Vs.

Raghubir Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikrant Rana, Advocate for the petitioners.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the petitioners seeking setting aside of orders dated 01.12.2014 (Annexure P1) and 16.05.2019 (Annexure P2) passed by learned Additional Civil Judge (Junior Division), whereby learned trial Court has dismissed in default the Suit, as well as dismissed the application for restoration of the said Suit.

Brief facts of the case are that the petitioners/plaintiffs had filed a Suit for declaration with consequential relief of permanent injunction in respect of suit land.

It is submitted by learned counsel for the petitioners that their Civil Suit was adjourned from 17.11.2014 to 01.12.2014. However, counsel for the petitioners inadvertently noted the date as 11.12.2014. It is submitted that when on 11.12.2014, the case was not listed, counsel for the petitioners/plaintiffs before the learned trial Court verified reason for non-listing of the matter, and came to know

that the Suit had been dismissed-in-default vide impugned order dated 01.12.2014 (Annexure P1).

It is submitted that immediately thereafter, the petitioners filed an application dated 11.12.2014 (Annexure P3) for restoration by mentioning the inadvertence. It is submitted that restoration application remained pending before the learned trial Court for five years and was ultimately dismissed by the learned trial Court vide impugned order dated 16.05.2019 (Annexure P2).

Learned counsel for the petitioners submits that grave injustice and harm will be caused to the petitioners/plaintiffs if the Suit is not restored.

After hearing learned counsel for the petitioners, notice of motion in the present revision petition is being dispensed with at this stage, as it will only cause further delay in the matter.

Perusal of impugned order dated 16.05.2019 whereby restoration application filed by the petitioners has been dismissed, shows that the ground for dismissal cited by the learned trial Court is that the reason given by learned counsel for the plaintiffs/petitioners that he had noted down wrong date does not constitute “sufficient cause” and therefore, application for restoration was dismissed.

In my view, the explanation given by learned counsel for not attending the hearing on 01.12.2014 is plausible as, it is possible that learned counsel for the plaintiffs/petitioners would have noted the date as 11.12.2014 instead of 01.12.2014. Moreover, it is not as though

the petitioners had defaulted frequently in appearing before the learned trial Court. Further, this Court in case of ***Criminal Misc. No.67626-M of 2006 titled as “Om Parkash Vs. M/s Golden Forest India Ltd.”*** has held in similar circumstances wherein too the counsel had noted down wrong date, that the noting of wrong date by counsel constituted sufficient cause. Above view has been followed by this Court in ***Criminal Misc. Nos.36522-M, 36524-M and 36526-M of 2006 titled as “Purushotam Mantri Vs. Vinod Tandon @ Hari Nath Tandon”***.

Accordingly, present revision petition is allowed, and impugned orders dated 01.12.2014 and 16.5.2019, are set aside.

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

14.02.2023

Sunena

(Nidhi Gupta)
Judge

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