

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(121)

CR-5355-2022 (O&M)

Date of Decision : May 04, 2023

Kamlesh

.. Petitioner

Versus

Durga Devi and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranvijay Singh, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-8061-CII-2023

Present application has been filed for amendment of the civil revision so as to correct certain inadvertent errors which have crept into while drafting the revision petition.

Keeping in view the facts mentioned in the application, which are duly supported by an affidavit, the application is allowed and the amended civil revision petition is taken on record.

CR-5355-2022

1. Present revision petition has been filed challenging the order dated 03.08.2022 (Annexure P-5) whereby the appeal filed against the order dated 02.09.2019 (Annexure P-3), has been allowed and the suit of the respondents-plaintiffs has been restored.

2. Certain facts needs to be mentioned for correct appreciation of the issue in hand.

3. The respondent-plaintiffs had filed a civil suit wherein, the date of hearing of the suit was noted as 05.11.2015 instead of 15.10.2015. On 05.11.2015, when the respondents-plaintiffs came to know that the suit has been dismissed for non-prosecution on 15.10.2015, they applied for the certified copy on the said date, which was prepared on 17.11.2015 and on 18.11.2015, application was filed before the trial Court for recalling the order dated 15.10.2015 by which, the suit was dismissed for non-prosecution.

4. The trial Court dismissed the said application vide order dated 02.09.2019 holding that as the order dismissing the suit for non-prosecution was passed on 15.10.2015 whereas the application restoration was filed on 18.11.2015 i.e. beyond a period of 30 days, hence, the same was beyond limitation and in the absence of any application seeking condonation of delay, the said application was not maintainable and the same was dismissed.

5. Aggrieved against the decision of the trial Court, an appeal was preferred by the respondents-plaintiffs, which came to be decided on 03.08.2022 wherein, the appeal was allowed by holding that the application filed on 18.11.2015 seeking restoration of the suit was within limitation. The lower Appellate Court held that the suit was dismissed on 15.10.2015 and after coming to know about the said fact, an application was filed for supply of the certified copy on 05.11.2015, which was prepared on 17.11.2015 and on very next day, the appeal was filed, hence period spent in obtaining the certified copy from 05.11.2015 to 17.11.2015 is to be

excluded while calculating 30 days limitation hence, the application filed seeking restoration of suit on 18.11.2015 was within limitation period of 30 days.

6. The said order passed by the lower Appellate Court is under challenge in the present appeal.

7. Learned counsel for the petitioner argues that vide impugned order dated 03.08.2022 (Annexure P-5) the application filed by the respondents-plaintiffs seeking restoration of their suit has been allowed and that too without application of mind as the application seeking restoration was not within limitation.

8. On being asked to point out any perversity in the findings of the lower Appellate Court, learned counsel for the petitioner submits that the time taken in obtaining the certified copy could not have been excluded and the application was required to be filed seeking condonation of delay along with the application seeking restoration.

9. Once, the application was filed within a period of 30 days by excluding the time spent in obtaining the certified copy of the order, which certified copy was required to be filed along with the application seeking restoration of suit, the Court below was correct in taking a view that the time taken in preparation of the certified copy, needs to be excluded while calculating 30 days limitation for filing application seeking restoration of the suit.

10. Even otherwise, even if according to the trial court, application filed seeking restoration of suit was beyond limitation, due opportunity should have been extended to the petitioner to file appropriate application rather than dismissing the application on technicality. Court should follow

the procedure which achieve the purpose that lis between the parties should be decided on merits as far as possible.

11. Keeping in view the above, no ground is made out for any interference by this Court in the present civil revision petition.

12. Dismissed.

May 04, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No