

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

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RSA No.5048 of 2016 (O&M)
DATE OF DECISION : 19th JANUARY, 2023

Harnek Singh (since deceased) through his legal heirs

.... Appellant

Versus

Baljit Kaur

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Vikas Mehsempuri, Advocate,
for the appellant.

Mr. Rakesh Gupta, Advocate,
for the respondent.

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RAJBIR SEHRAWAT, J. (Oral)

CM-13097-C-2016

This is an application for condonation of delay of 22 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay in re-filing the appeal is condoned.

Main Appeal

The present appeal has been filed by the appellant for setting aside the concurrent judgment and decree dated 04.04.2016 passed by the District Judge, Patiala and the judgment and decree dated 17.01.2015 passed by the Civil Judge (Senior Division), Patiala.

The brief facts of this case, as available on file, are that one Harnek Singh and two others had filed a suit for declaration that the plaintiffs are the owner in possession of 5/24 shares in the suit property.

At the stage of evidence, the plaintiffs examined in examination-in-chief only one witness Dalbir Kaur, who statedly, was the general power of attorney holder of one of the plaintiffs, Harnek Singh. However, the said witness did not appear for cross-examination. Thereafter, several dates were given for completion of the evidence. However, no further evidence was led by the plaintiffs. Therefore, the suit of the plaintiffs was dismissed in default on 06.02.2012. Thereafter, application for restoration of the suit was filed; not by the plaintiffs but, by the statedly power of attorney holder of only one of the plaintiffs, namely, Harnek Singh. In the application, issues were also framed; and the application for restoration of suit was rejected vide judgment dated 17.01.2015. Against the said judgment, the appeal was filed before the District Judge, Patiala, however, even the said appeal has been dismissed by the lower Appellate Court. Hence, the present appeal.

Arguing the case, learned counsel for the appellant has submitted that although the issue regarding maintainability of the application as such has been answered in favour of the plaintiffs, yet the said application was dismissed by the trial Court on the ground of lack of locus standi. Once, the application was held to be maintainable, then the same could not have been dismissed on the ground of lack of locus standi; as such. The counsel has further submitted that the decision of the trial Court qua issue No.1 is beyond pleadings. To buttress his arguments, the counsel has submitted that the issue of genuineness of power of attorney in favour of the present appellant could not have even been decided under issue No.1. The counsel has further submitted that the lower Appellate Court has not recorded any findings qua issue No.1,

rather, has only said that the findings recoded by the trial Court are upheld.

On the other hand, learned counsel for the respondent has submitted that the application has rightly been dismissed by the Court below. In the reply filed to the application, it was specifically pleaded that the power of attorney in favour of the present appellant was not genuine, therefore, she could not have even filed the application for restoration of the suit. The counsel has further submitted that the Courts below have duly recorded the findings qua absence of sufficiency of cause while considering the issue as to whether there was sufficient cause for absence of the plaintiffs or not. The Courts below have recorded categorically that the evidence led on file by the applicant did not prove the sufficient cause for remaining absent from the proceedings. Hence, the present appeal deserves to be dismissed.

Having heard the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the respondent. It deserves to be highlighted that the suit was filed by three persons in their individual capacity under their own signatures in the year 2007. Midway the process of the trial of the suit, rather, only after examining Dalbir Kaur in examination-in-chief, the plaintiffs stopped appearing to contest the suit. The Courts below have categorically recorded that thereafter neither the Advocate engaged by the plaintiffs ever appeared nor did his proxy or junior ever appeared before the trial Court. Therefore, this shows that the plaintiffs themselves were not interested in getting the suit revived. In the year 2008 the power of attorney is stated to have been executed by one of the plaintiffs, namely Harnek Singh; in favour of the

present appellant, on the basis of which, she filed application for restoration of the suit. Since, this power of attorney is stated to have been executed only on behalf of one of the plaintiffs, namely, Harnek Singh, therefore, two of the plaintiffs, undisputedly, never choose even to file any application for restoration of the suit.

While filing reply to the said application, the defendant had specifically raised the issue qua the power of attorney being forged and the appellant having no locus standi to move the application for restoration of suit. However, during the evidence, the appellant has not led any material or has examined any witness to prove the validity of the power of attorney in her favour. Therefore, the findings recorded by the trial Court; that the appellant was not having locus standi to file the application for restoration of the suit, when the plaintiffs themselves were not interested in the same; is perfectly legal and valid.

Although the counsel for the appellant has submitted that the Courts below have not adverted to the sufficiency of cause for absence of plaintiffs from the proceedings, however, even this argument is incorrect as per the record. Firstly, this aspect could not have been raised by the present appellant at all. The absence in the original suit was on behalf of the plaintiffs themselves. Therefore, it is only they who could have come forward to explain the absence at the relevant time. Needless to say that at the time of absence from the proceedings, the appellant was not the signatory to the pleadings and the same were filed by the plaintiffs themselves under their own signatures and the proceedings were being conducted by the plaintiffs themselves. Although the present appellant Dalbir Kaur had been produced before the trial Court, however, she was

produced only as a witness in support of the case of the plaintiffs. But during the proceedings, she was not even produced by the plaintiffs for cross-examination. Therefore, it is obvious that the plaintiffs never intended to examine her anymore, and they did not intend her to have any concern with the matter involved in the suit.

Moreover; in the evidence, the appellant has taken a plea that she was admitted in the hospital and has examined Dr. Sudip Singh as AW2. However, while appearing in the witness box, said Dr. Sudip Singh has conceded that the appellant visited his hospital only once for treatment. Therefore, the trial Court is not wrong in coming to the conclusion that this was not a ground sufficient for condoning absence from the proceedings. Moreover, this, at the best, reflects upon the compulsive absence of the present appellant, whereas, for the purpose of restoration of the plaint the absence of the plaintiffs themselves was to be assessed. Any absence of present appellant was, otherwise also, irrelevant.

In view of the above, finding no merit in the present appeal, the same is dismissed.

All pending miscellaneous application(s) stands disposed of as such.

19th JANUARY, 2023
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes