

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

CR-493-2019

Date of decision:11.01.2023

MARKET COMMITTEE, JIND

...Petitioner(s)

vs

DALBIR SINGH & ANOTHER

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Munish Kumar Garg, Advocate and
Ms. Bhawna Thakur, Advocate and
Mr. Vikas Mehra, Advocate
for respondent No.1.

NIDHI GUPTA, J.(Oral)

Present Revision Petition has been filed seeking quashing of impugned order dated 24.08.2016 (Annexure P11) whereby application for restoration of appeal filed by the petitioner was dismissed; and impugned order dated 27.11.2015 (Annexure P7) whereby the appeal filed by the petitioner against the judgment and decree dated 06.06.2012 was dismissed in default, both impugned orders passed by learned lower Appellate Court in Miscellaneous No.285 of 09.12.2015 and in Civil Appeal No.2 of 08.01.2014 titled as “Haryana Agriculture Marketing Vs. Dalbir Singh”.

Brief facts of the case are that the contesting respondent No. 1/plaintiff (hereinafter referred to as ‘the respondent’), was in the employment of the petitioner/defendant since 17.11.1995. Subsequently, vide letter dated 26.03.2006 the respondent/plaintiff was regularized w.e.f. 01.10.2003. Thereafter, the respondent made a representation

seeking grant of Assured Career Progression (ACP) scale under Haryana Civil Services (Assured Career Progression) Rules, 1998 (hereinafter referred to as “the Rules”) w.e.f. 01.12.2005. As the same was not granted to him, the respondent then filed the present Civil Suit for declaration and mandatory injunction on 26.08.2009 to the effect that the respondent/plaintiff is entitled for first ACP scale of Rs.5000-7850 with effect from 01.12.2005 on completion of ten years satisfactory services as per the Rules with consequential benefits with interest @ 24% per annum from due date till date of payment.

Vide judgment and decree dated 06.06.2012, the above said Civil Suit of the respondent was decreed along with interest @ 18% per annum. Accordingly, the respondent filed Execution Application No.93 of 09.10.2012 in pursuance to which warrants of attachment were issued on 22.04.2013 for 24.04.2013. However, since complete payment was made to the respondent along with interest, he withdrew the Execution Application by making a statement vide order dated 29.08.2013 (Annexure P5) passed by learned Executing Court. Whereafter, the petitioner filed the appeal on 08.01.2014 which was dismissed in default vide impugned order on 27.11.2015, for which the petitioner filed application for restoration on 09.12.2015 to which the respondent filed reply on 12.07.2016. It is the petitioner’s grievance that vide impugned order dated 24.08.2016 of even date, the petitioner’s application for restoration of the case has been dismissed.

Learned counsel for the petitioner submits that the petitioner’s appeal has never been considered by the Court below on merits and the petitioner’s right to appeal cannot be taken away. It is submitted that the

learned District Judge vide impugned order dated 24.08.2016 has wrongly dismissed the petitioner's application for restoration.

In response, learned counsel for the respondents refers to order dated 24.8.2016 Annexure P10 passed in the Civil Appeal filed by the petitioner, wherein it has been recorded as follows:-

“Learned counsel for the respondent contended that the present application is filed by the applicants just to wastage of court time as nothing is survive to adjudicate in the present appeal and the appeal was filed after a delay of 543 days and the same was dismissed on the asking of the learned counsel for the appellants. So, the present application for restoration may kindly be dismissed, as the execution of decree under appeal has already been satisfied and he placed on record certified copy of the order dated 29.08.2013 passed by Shri Basruddin, the then learned Civil Judge (Senior Division), Jind.

Learned counsel for the applicants feels handicap to rebut the contention and stated that he requires some time to confirm the actual position. Heard. File be put up after lunch break.”

Learned counsel for the respondent submits that when the matter was taken up after lunch, counsel for the petitioner/appellant did not appear in the matter whereupon impugned order dated 24.8.2016 Annexure P-11 was passed dismissing the petitioner's application for restoration of the appeal. It is accordingly submitted that nothing survives in the matter and the present Revision Petition deserves to be dismissed.

I have heard learned counsel for the parties.

It is undisputed that the appeal was filed by the petitioner on 08.01.2014 after the execution of the judgment and decree under appeal already stood satisfied on 29.08.2013.

Moreover, from the afore-enumerated facts which are borne on the record of the case, it is evident that the conduct of the petitioner has been of utmost casualness. The appeal was filed after a delay of 514 days whereafter it was dismissed in default for want of prosecution on 27.11.2015 Annexure P7. Thereafter, application for restoration of Civil

Appeal was also not pursued diligently as, even in the hearing of the application for restoration, counsel for the petitioner was not present when the same was taken up post lunch on 24.08.2016. Further, learned counsel for the petitioner is unable to controvert that much water has flown under the bridge in the interregnum. I am of the considered opinion that the present case is a classic example which shows that the cause of litigation highlights the appeals of procedural provisions whereby frivolous attempts are made by unsuccessful litigants by putting up spurious objections to deprive the decree-holder from enjoying the fruits of litigation. Therefore, I am in agreement with the finding of the learned Court below that nothing survives for adjudication in the present appeal. Admittedly, the decretal amount was disbursed as far back as on 29.08.2013.

Accordingly, I find no ground is made out to exercise the discretionary jurisdiction granted under Article 227 of the Constitution of India. The present Revision Petition hereby, stands dismissed.

11.01.2023
Sunena

(Nidhi Gupta)
Judge

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