

244

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

CR-9532-2018 (O&M)

Date of Decision: 02.05.2023

Manjit Kaur

....Petitioner

Versus

Balwinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.S. Thind, Advocate
for the petitioner.

Ms. Isha Goyal, Advocate
and Ms. Shivani Saini, Advocate
for respondents No.1 & 2.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 10.09.2018 (Annexure P-1) passed by Ld. Additional District Judge, Amritsar dismissing application filed by petitioner for restoration of appeal, which was dismissed in default on 07.10.2016.

2. Succinct facts first, as pleaded in the revision.

2.1. Petitioner filed a civil suit against respondents which was dismissed by Ld. Trial Court on 03.04.2014. Aggrieved therefrom, the petitioner filed an appeal before the Ld. Additional District Judge, Amritsar. Though on each and every date the petitioner attended the hearing along with her counsel, but on one date of hearing i.e. 07.10.2016, the petitioner could not attend court proceedings and the Ld. Appellate Court dismissed the appeal vide impugned order.

3. Learned counsel for the petitioner would argue that on previous date when petitioner came to the Court to attend her case proceedings, she noted a

wrong date as 07.12.2016 instead of 07.10.2016. Due to this reason, the petitioner was not able to attend the court proceedings on 07.10.2016. Further on the said date, the petitioner had gone out of station due to the death of her near relative and remained under shock.

4. Learned counsel for respondents No.1 & 2 would oppose the revision and argue that application is hopelessly time barred and absence of the petitioner is also intentional.

5. *Per contra*, learned counsel for the petitioner would argue that petitioner had contacted her counsel again and again to know about the fate of appeal, but her counsel gave lame excuses. On 08.02.2017, the petitioner again tried to contact her counsel but to no avail. However, on enquiry, she came to know on 16.02.2017 that the aforementioned appeal filed by petitioner had been dismissed in default on 07.10.2016.

5. Heard.

6. In view of the facts and circumstances as enumerated herein above, it so transpires that the wrong noting of the date by petitioner seems to be *bonafide* mistake caused by some miscommunication and/or otherwise unintentionally genuinely noting the wrong next date of hearing. Therefore, she could not appear on the slated date of hearing resulting into dismissal of appeal in default. Subsequent application for restoration was naturally delayed since she did not have the knowledge of dismissal of appeal in default and the same was filed when it came to her knowledge causing 138 days delay in filing the application. Delay has been particularly explained in paragraph 6 & 7 of the revision which are as under:-

“xxxx xxxx xxxx xxxx

6. That the counsel of the petitioner has aware about these facts, the case has adjourned for various dates i.e. 28.7.2016, 20.8.2016 and 7.10.2016. It is pertinent to mention here that it is totally ignorance of the counsel for the petitioner. It is also the responsibility of the counsel that if the client has not able to

appear in person in court then he look after his/her case because persons appointed counsels to pursue their cases on their behalf. It is all happen by the mistake of the counsel for the petitioner.

7. That after filing the appeal the Ld. Additional District Judge, Amritsar dated 17.12.2015 adjourn the case on 28.1.2016 with the observation that 16.12.2015 was the holiday thus case adjourn for arguments. On 28.1.2016 the case was adjourned for 18.2.2016, on 18.2.2016 arguments were addressed and the case was adjourned for 18.3.2016, and the counsel for the applicant/appellant moved transfer application and informed that court and the case was adjourn for 27.4.2016, on 27.4.2016 counsel for respondents make a request for adjournment and the case adjourn for 20.5.2016 and again on 2.7.2016 time was sought and case adjourn for 28.9.2016 and subsequently counsel for both the parties did not appear on 28.7.2016 and the case was adjourn for 20.8.2016, on 20.8.2016 none of the counsel appeared and the case was adjourn for 12.9.2016, on 12.9.2016 none of the counsel appeared and the case was adjourn to 7.10.2016.xxxx xxxx xxxx xxxxx”

7. Petitioner should not suffer for the lapse of her counsel. In view of this and believing the mistake either on the part of petitioner or caused by miscommunication by her counsel, to be genuine, the impugned order is set aside. Appeal is restored to its original number. Ld. First Appellate Court to continue the proceedings as per law.
8. Parties through counsel to appear before Ld. First Appellate Court on 30.05.2023.
9. Revision stands allowed.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 02, 2023
ashish

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