



CR-4493-2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-4493-2015 (O&M)**

Date of Decision: 04.01.2024

Bindu @ Mallahar deceased through LRs

...Petitioners

Versus

Nathi Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH**Present:** Mr. Ravi Malik, Advocate
for the petitioners.Mr. Arjun Singh Rai, Advocate
for respondent No.1.

GURBIR SINGH, J.

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 08.10.2013 (Annexure P-2) and order dated 14.01.2015 (Annexure P-4) passed by Ld. Additional District Judge (I), Palwal whereby appeal filed by the petitioners has been dismissed in default due to non-appearance of their counsel and application dated 31.05.2014 (Annexure P-3) filed for restoration of the same has also been dismissed.

2. The brief facts necessary for the disposal of this revision petition are that petitioners-defendants filed an appeal against the order dated 22.04.2011 passed by the Court of Ld. Civil Judge (Sr. Division), Palwal whereby application moved by the petitioners under Order 9 Rule 13 read with Section 151 CPC, was dismissed. The said application was moved on the ground that petitioners-defendants were not having knowledge and notice about the passing of the ex-parte judgment and decree dated



11.10.2004 and they came to know only when the respondents-plaintiffs illegally and forcibly intended to take possession of the suit property. The application was filed within a period of limitation from the date of the knowledge of passing of the ex-parte judgment and decree. On 08.10.2013, the petitioners-appellants failed to appear before the Court and as such appeal was dismissed in default.

3. The learned counsel for the petitioners has argued that an application for restoration of the appeal on the ground that petitioners-appellants could not appear since their counsel told them that their personal appearance was not required and they could enquire about the case on phone. On enquiry, counsel told that date was fixed by the Court. Later on, petitioners-appellants were astonished to know that their appeal was dismissed in default in the absence of petitioners-appellants and their counsel. The absence of petitioners was neither intentional nor willful. However, the learned lower Appellate Court dismissed the application. Moreover, petitioners earlier filed suit regarding the suit property and same was decreed.

4. Learned counsel for respondent No.1 has argued that the appeal was dismissed in default on 08.10.2013 and the application for restoration was filed on 31.05.2014. The story propounded by the petitioners-defendants that their counsel told them their presence was not required and the counsel did not appear in the Court, is not acceptable since the party who has filed the appeal and is pursuing the litigation and is not expected to remain silent for such a long period.

5. I have heard the submissions of the learned counsel for the parties.



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6. Each case is to be seen from its own angle. Earlier another suit was filed by the petitioners and the same was decreed in favour of the petitioners-appellants and no appeal was filed against the said judgment and decree, which has attained the finality. The petitioners-appellants were not to gain anything by absenting from the Court. The counsel engaged by the petitioners-appellants failed to appear in the Court on the relevant date the petitioners-appellants should not suffer.

7. Law is well settled that a party should not be non-suited on mere technicalities. Procedure is meant for advancement of justice. A party must be given full opportunity to get decision on merit. It is specific case of the petitioners that on coming to know about the dismissal of the appeal in default, an application for restoration of the appeal was filed within limitation from the date of knowledge. Moreover, no prejudice would be caused to the other side which can be compensated with costs.

8. In view of above, present revision petition is allowed and the impugned order is set aside. Appeal which was dismissed in default on 08.10.2013 is ordered to be restored to its original number but subject to costs of Rs.15,000/-, out of which Rs.5,000/- be deposited in the concerned DLSA and remaining Rs.10,000/- be paid to the respondents.

9. The parties are directed to appear before the Ld. lower Appellate Court on 29.05.2024.

10. Pending application, if any, shall also stand disposed of.

04.01.2024*Parveen kumar***(GURBIR SINGH)
JUDGE**

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