

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

CR-4736-2017 (O&M)
Date of decision: 08.05.2024

BHOORI DEVI (DECEASED) THROUGH HER LR MUKESH
KUMAR

..Petitioner

Versus

LAKHMI CHAND

..Respondent

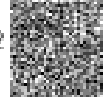
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the petitioner.

Mr. Kuljit Singh, Advocate
and Mr. Anmol Singh, Advocate
for Mr. Peeush Gagneja, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1 Smt. Bhuri Devi (deceased) through her legal representative Sh. Mukesh Kumar assails the correctness of trial Court's order refusing to restore the suit, which was dismissed for non-prosecution. In the year 2013, Smt. Bhuri Devi filed suit for possession by way of specific performance of the agreement to sell. Smt. Bhuri Devi died during the pendency of the suit. Consequently, on 27.07.2006, the suit was dismissed for non-prosecution under Order IX Rule 2 of the Code of Civil Procedure, 1908. The petitioner i.e. Sh. Mukesh Kumar was a minor. He filed application through his father for restoration of the suit, which on 13.09.2008 was also dismissed for non-prosecution. Subsequently, on attaining the age of majority, Sh. Mukesh Kumar filed application for restoration of the suit, which has been dismissed by the trial Court on the ground that a previous application was dismissed in default and this application has been filed after a lapse of four years. The



Court has also recorded that Sh. Mukesh Kumar attained the majority on 30.04.2010, whereas, the application was filed on 15.11.2012.

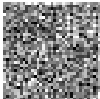
2 Though, the learned counsel representing the petitioner is not present, however, this Court has heard the learned counsel representing the respondent.

3. He submits that the previous application filed on behalf of the petitioner was dismissed in default and no application for restoration was filed. He further submits that there is a delay of four years in filing the second application.

4. This Court has considered the submissions of the learned counsel representing the respondent.

5. A suit filed by a minor cannot be dismissed in default and the Courts are expected to assume the role of a parent and a guardian in case of minor or person of unsound mind or a disabled. Dismissal on grounds of non-prosecution is an error committed on the part of the Court as the Court should as per provisions of law appoint a next friend or guardian and where it was filed by his father, the Court should not have dismissed the application. In such cases, the Court shall make extra efforts to ensure that the interest of the minor is not jeopardized. Here is a case where the plaintiff's suit has been dismissed in default. His grand-mother filed the suit for possession by way of specific performance of the agreement to sell after depositing substantial Court fee. As per the Limitation Act, 1963, the period of limitation for filing the application for restoration begin to run from the date, the minor attains the age of majority. Any which way, efforts must always be to dispose of the matters on merits instead of technicalities.

Dismissal on mere technical grounds, choke justice on merits. Courts should



always attempt to prefer substantial justice over technicalities. The Courts have been constituted for advancing the cause of justice by delivering substantive justice. The view taken by the trial Court is myopic. Though, there was lapse on the part of the application to file the second application, however, there is no material to prove that the minor was in knowledge of the previous application. Furthermore, unless malafides are writ large on the conduct of the party, matter should be allowed to be contested on merits.

6. Keeping in view the aforesaid discussion, the revision petition is allowed. The impugned order is set aside. The suit filed by the predecessor of the plaintiff is restored to its original number.

7. All the pending miscellaneous applications, if any, are also disposed of.

May 08th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

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