

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 101

Case No. : CR No.8496 of 2016 (O&M)

Date of Decision : February 15, 2024

Islamuddin Petitioner
vs.
Dharambir and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sunil Chadha, Senior Advocate
with Ms. Tanvi Dhull, Advocate
and Mr. Raghav Chadha, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 02.11.2016 (Annexure P-5), passed by learned Civil Judge (Junior Division), Gurgaon (for brevity – Trial Court), against dismissal of application under Section 151 CPC, filed by the plaintiff/petitioner, for restoration of the suit filed by him.
2. Petitioner Islamuddin was plaintiff and respondents Dharambir etc. were defendants before the learned Trial Court. Both the parties hereinafter shall be addressed to as per their original status in the suit.
3. The facts, as culled out from the paper-book and necessary for proper adjudication of this revision petition, are that plaintiff filed a Civil Suit No.120 dated 26.07.2004 titled Islamuddin vs. Dharambir Singh and

another for decree of possession by way of specific performance of agreement to sell dated 10.06.2003 and in the alternative, for recovery of amount of Rs.16,20,000/- along with interest etc., with regard to the land measuring 23 kanals 17 marlas @ Rs.5,40,000/- per acre, out of which earnest money of Rs.3,20,000/- was paid.

4. During pendency of the said suit, parties entered into compromise on 14.10.2004 and it was settled that defendants would get sale deed registered in favour of plaintiff within a period of two months from the date of compromise and plaintiff would make payment of balance sale consideration and in case, defendants failed to execute sale deed, suit of the plaintiff would be decreed on deposit of balance sale consideration before the concerned Court.

5. On the basis of statement made by counsel for the plaintiff to the effect that he did not wish to proceed with the suit in view of aforesaid compromise, vide order dated 14.10.2004, the said suit was dismissed as withdrawn.

6. On 08.12.2004, the plaintiff filed application dated 07.12.2004 for restoration of the suit on the ground that the defendants refused to get the sale deed registered in spite of having received Rs.2,00,000/- in cash on the day of compromise. On receiving notice on 26.12.2004 of the aforesaid application, defendants filed reply dated 28.03.2005, pleading therein that compromise was got effected by suppressing material facts. The defendants visited office of the concerned Sub-Registrar on 14.12.2004 for getting the sale deed executed and also moved application for getting their presence marked and payment of Rs.2,00,000/- in cash was not mentioned in the

compromise. It was also pleaded that the plaintiff, in collusion with counsel of defendants, played fraud with the defendants and succeeded in getting the compromise effected fraudulently and malafidely. So, prayer for dismissal of restoration application was made.

7. On 24.08.2006, counsel for the plaintiff made statement before the concerned Court that he did not wish to press the application for restoration of the suit. So, vide order of even date, the said application was dismissed as not pressed. However, on the same day i.e. 24.08.2006, plaintiff filed Execution Petition dated 24.08.2006. The defendants filed objections dated 22.01.2007 to the said Execution Petition. The plaintiff filed reply dated 12.12.2007 to the objections against Execution Petition. The plaintiff also moved another application dated 28.08.2010 under Order 23 Rule 3 read with Section 151 CPC, with prayer that defendants be directed to execute sale in favour of the plaintiff, in view of the said provisions. Defendants again filed reply to this application as well.

8. The learned Executing Court, vide order dated 22.04.2013, restored the main suit i.e. **Civil Suit No.120 dated 26.07.2004** titled **Islamuddin vs. Dharambir Singh and another** to its original number and further ordered to separate the Execution Petition from the file pertaining to **Civil Suit No.120 dated 26.07.2004**. Aggrieved against the said order, defendants filed review application dated 20.05.2013, which was dismissed by learned Court vide order dated 02.12.2014. In order to get relief, defendants preferred **C.R. No. 890 of 2015**, which was decided by this Court vide order dated 09.05.2016. The relevant extract of the said order reads as

under :-

“In view of what has been discussed hereinabove, the petition is allowed. The impugned order dated 02.12.2014 is set aside. As a natural corollary, order dated 22.04.2013 is also set aside. However, the respondent may, if so advised, take recourse to appropriate proceedings, in accordance with law, for restoration of the suit earlier dismissed as withdrawn.”

9. So, the plaintiff filed application dated 08.07.2016, under Section 151 CPC, for restoration of the suit, to which defendants filed reply. The learned Trial Court, vide order dated 02.11.2016, dismissed the said application. The present revision petition has been preferred against the said order of dismissal dated 02.11.2016, for restoration of suit.

10. Learned senior counsel for the plaintiff has argued that the plaintiff honestly entered into the compromise with the defendants but the defendants intentionally got the suit dismissed and did not honour the compromise and failed to execute the sale deed as per terms of compromise. The bona fides of the plaintiff can be seen from the date of filing of suit and thereafter. The learned Trial Court agreed that a party should not be non-suited on mere technicalities, but non-suited the plaintiff on the ground that no formal application for condonation of delay was filed, except for oral argument. It was observed that a considerable time has elapsed since the day of institution of the suit and the delay can only be attributed to the plaintiff himself and none other. It is further held that there is no allegation on the defendant that he caused delay in the matter at any point of time.

11. Learned senior counsel has further argued that the Court can condone the delay even on the oral prayer. It is not necessary that a formal

application should be filed and formal application for condonation of delay is not necessary at all. When the plaintiff is not at fault, the suit is required to be restored.

12. On the other hand, learned counsel for the defendants has argued that the plaintiff has not sought recalling of order dated 14.10.2004, whereby his suit was dismissed as withdrawn. Plaintiff failed to adhere to the terms of the compromise. Earlier also, he withdrew the application for restoration. So, second application for restoration is not maintainable at all.

13. I have heard the submissions of learned counsel for the parties and have gone through the case file.

14. In case **Jet Ply Wood Private Ltd. vs. Madhukar Nowlakha – Law Finder Doc Id # 119537**, it is held by Hon'ble Supreme Court that the Court has inherent power to recall its order and restore the suit. The relevant extract of the said judgment reads as under :-

*“25. The aforesaid position was reiterated by the learned Single Judge of the High Court in his order dated 4th February, 2005, though the language used by him is not entirely convincing. However, the position was clarified by the learned Judge in his subsequent order dated 14th March, 2005, in which reference has been made to a bench decision of the Calcutta High Court in the case of **Rameswar Sarkar** (supra) which, in our view, correctly explains the law with regard to the inherent powers of the Court to do justice between the parties. There is no doubt in our minds that in the absence of a specific provision in **the Code of Civil Procedure** providing for the filing of an application for recalling of an order permitting withdrawal of a suit,*

*the provisions of [Section 151](#) of the Civil Procedure Code can be resorted to in the interest of justice. The principle is well established that when [the Code of Civil Procedure](#) is silent regarding a procedural aspect, the inherent power of the court can come to its aid to act *ex debito justitiae* for doing real and substantial justice between the parties. This Court had occasion to observe in the case of [Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal](#), AIR 1962 SC 527, as follows:*

"It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them."

15. In case **Ram Prakash Agarwal and another vs. Gopi Krishan (Dead through LRs) and others – (2013) 11 Supreme Court Cases 296**, it is held that the Court, under Section 151 CPC, may adopt any procedure to do justice, unless the same is expressly prohibited. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision but inherent powers cannot be used to re-open the settled matters.

16. In case **Universal Builders and Contractors vs. Sheila Singh Uppal and others – 2009 (2) PLR (Delhi) 47**, it is held by Hon'ble Delhi High Court that even if there is only oral prayer, then also Court can condone the delay on its own. It is further held that delay can be condoned on ground of averments made in restoration application.

17. In case M/s Aravali Stone Company vs. Urban Improvement Trust – 2003 (3) CivCC 342, it is held that the suit was dismissed on the basis of pleading “No instruction”. It was further held that the application for restoration can be filed when plaintiff has notice of dismissal of suit. Application under Section 5 of the Limitation Act is not necessary in such case.

18. From the above said legal position, it is held when application for restoration of a suit is filed, then it is not necessary to file separate application for condonation of delay. The Court can invoke inherent jurisdiction to restore the suit for doing real and substantial justice between the parties if the matter is not finally adjudicated upon.

19. In the case in hand, the suit was not decided on merits. Even the defendants made statement that the suit be decreed as per the compromise but counsel for the plaintiff made statement to withdraw the suit. A party cannot be non-suited merely on technical grounds. The parties must be given sufficient opportunity to prove their claims. As per settled principle of law, the plaintiff, after dismissal of suit, has been filing one application after the other, to get the suit restored. By the wrong legal advice, he moved application for restoration of the suit, which was got dismissed as withdrawn. Thereafter, the suit was ordered to be restored in the Execution Petition but the said order was set aside, observing that the Trial Court and Executing Court have different inherent powers. Under such circumstances, this Court is of the view that the petitioner has been continuously taking steps to get the suit restored. He is victim of wrong legal advice. Filing of separate application for condonation of delay under such circumstances, for

restoration of suit, is not the requirement of law. The Court, in order to do complete justice to the parties, is not powerless to order restoration of a suit, especially when both the parties can be given opportunity to prove their case as per their pleadings.

20. In view of the above discussion, the present revision petition is allowed. The impugned order dated 02.11.2016 (Annexure P-5), passed by learned Trial Court, is set aside. The application dated 08.07.2016, filed by the plaintiff/petitioner under Section 151 CPC, for restoration of the suit i.e. **Civil Suit No.120 dated 26.07.2004** titled **Islamuddin vs. Dharambir Singh and another** is allowed and said suit is restored to its original number. The learned Trial Court is directed to proceed in accordance with law.

21. The parties are directed to appear before the learned Trial Court on 15.03.2024.

22. Keeping in view the peculiar circumstance that the suit is quite old, the learned Trial Court is requested to make endeavour to dispose of the suit expeditiously, by granting three effective opportunities to either party to lead evidence. The parties are also directed to co-operate and not to take unnecessary adjournments.

23. Pending applications, if any, shall stand disposed of along with this judgment.

February 15, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.