

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

CWP-2895-2024

Decided on: 08.02.2024

Rameshwar Lal

... Petitioner

Versus

Financial Commissioner, Revenue, Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kamal Chaudhary, Advocate, for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 16.08.2023 (Annexure P-1), whereby the order dated 24.01.2012 (Annexure P-2) passed by the learned Commissioner, Hisar Division, order dated 28.04.2011 (Annexure P-3) passed by the District Collector, Fatehabad, and order dated 24.01.2011 (Annexure P-4) passed by the Assistant Collector Ist Grade, Tohana, were wrongly upheld.

It has been contended by learned counsel for the petitioner that the private respondent filed an application Form-L in the Court of Assistant Collector Ist Grade, Tohana on 07.06.2001 against the petitioner regarding land measuring 121 Kanal 0 Marla for delivering 1/3rd share amounting to sum of Rs.72,612. Paisa 34 only for the crops of Kharif 1999 to Kharif 2000. This application was dismissed by the Assistant Collector, Tohana on 27.01.2004 as the respondent did not appear before him. He submits that the respondent filed an application for recalling of the order dated 27.01.2004 dismissing the application in default. It is submitted that the application for restoration was filed without filing any application for condonation of delay as it was filed after

a delay of two years. He submits that the Court below without appreciating the law of limitation, restored the original application, which was dismissed in default on 27.01.2004. He submits that the learned Assistant Collector Ist Grade proceeded *ex parte* against the petitioner and passed the order of ejectment dated 27.05.2010. Aggrieved by the same, the petitioner filed an appeal and the Appellate Court set aside the order of ejectment dated 27.05.2010 vide order dated 30.11.2010 by remanding the case for deciding it afresh. He submits that the learned Assistant Collector Ist Grade has not decided the case on merits and passed the order 24.01.2011 to the effect that the application for restoration was rightly and legally accepted and proceeded with the application in the proceedings of Form-L which caused a great miscarriage of justice and prejudice to the petitioner. He further submits that the petitioner filed an appeal impugning the order dated 24.01.2011 before the learned District Collector, Fatehabad, but the District Collector dismissed the same vide order dated 28.04.2011 and thereafter, revision filed against the order dated 28.04.2011 was also dismissed vide order dated 24.01.2012 by learned Commissioner, Hisar Division, Hisar. It is submitted by him that the order passed by the learned Commissioner was factually incorrect as it was observed that no appeal has been filed by the petitioner, whereas, appeal has been filed before the District Collector. He has further submitted that in the facts and circumstances of the case, the impugned orders being unsustainable in the eyes of law deserves to be set aside.

Heard.

It is apparent from the perusal of the record that the application filed by the private respondents was dismissed in default on 27.01.2004.

Thereafter, on the application filed for restoration of the case by the private

respondents, Assistant Collector Ist Grade, Tohana vide his order dated 22.05.2006 restore the proceedings and kept the petition pending for summoning of the respondent i.e. the present petitioner and at that stage none had appeared on behalf of the present petitioner and ultimately ejectment order was passed against the petitioner on 27.05.2010. The petitioner challenged the same by way of filing an appeal which was allowed on 30.11.2010 and the case was remanded to the Assistant Collector Ist Grade who vide order dated 24.01.2011 held that the application was rightly restored. As has been held by the learned Financial Commissioner that the ejectment order against the petitioner was passed on 28.03.2011 but no appeal against the same has been filed and the petitioner is the only agitating against the order passed on the application for restoration of the original application which was ultimately restored. The precise submissions made by counsel for the petitioner is that the case was dismissed in default on 27.01.2004, whereas, the same was restored after two years without there being any application for condonation of delay. It is apparent that at that stage the petitioner even did not appear in the proceedings and the case was not decided on merits. The Court of competent jurisdiction which had dismissed the case for non-prosecution, had the jurisdiction to restore the case to its original number by recalling the earlier order and proceed with the proceedings for its adjudication on merits. Thereafter, the proceedings have been carried out after hearing both the sides. This Court does not find any infirmity in the restoration of the case for its decision on merits. The arguments raised by counsel for the petitioner regarding the limitation are without any force. If the Court is satisfied with the facts and circumstances of the case, it can always restore the case and decide it

on merits after hearing the concerned parties. Thus, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

08.02.2024
sharmila

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