

2024:PHHC:123549



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CR-3166-2024 (O&M)
Date of decision: 18.09.2024

Suraj

...Petitioner

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Aniket Singh Chauhan, Advocate for the petitioner.

VIKAS SURI, J. (Oral)

1. Challenge in this petition under Article 227 of the Constitution of India is to the order dated 27.03.2024 (Annexure P-1) passed by learned Additional District Judge, Karnal, and order dated 10.03.2023 (Annexure P-2) passed by learned Additional Chief Judicial Magistrate/Civil Judge (Senior Division), Karnal, whereby the application under Order 9 Rule 9 of the Code of Civil Procedure, 1908 (for short 'CPC'), was dismissed being time barred.

2. The facts in brief leading to filing of the present petition are that suit filed by the petitioner-plaintiff was dismissed in default due to his non appearance vide order dated 13.12.2021. Thereafter, petitioner filed an application under Order 9 Rule 9 CPC averring that he had mistakenly noted the next date of hearing as 13.03.2022 instead of 13.12.2021 and on the said date, on an inquiry having been made from



the Court as the case was not listed in the cause list, he came to know that the suit has been dismissed in default on 13.12.2021. Petitioner applied for certified copy of the said order and thereafter, filed the application seeking restoration of the suit on 18.04.2022. The trial Court after taking into consideration the averments made in the application and the statutory provisions as enunciated by judicial precedents, dismissed the aforesaid application vide order dated 10.03.2023 (Annexure P-2).

3. The petitioner preferred an appeal against order dated 10.03.2023, which after reappraisal of the factual aspect and the record, was dismissed vide order dated 27.03.2024 (Annexure P-1).

4. Aggrieved by the aforesaid orders, petitioner has challenged them by way of the present petition.

5. I have heard learned counsel for the petitioner and perused the paper book.

6. Undisputedly, the petitioner-plaintiff had filed a suit on 04.01.2018. The petitioner and his counsel failed to appear in the said proceedings on 13.12.2021. The suit was dismissed in default for non appearance of the plaintiff/his counsel. The said order has not been appended with the present revision petition. Admittedly, the application for setting aside order dated 13.12.2021 was moved on 18.04.2022.

7. It would be apposite to refer to Article 122 under Part I of the Third Division of the Schedule to the Limitation Act, 1963, which reads as thus:-



Description of suit	Period of limitation	Time from which period begins to run
To restore a suit or appeal or application for review or revision dismissed in for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of dismissal

8. A perusal of the above provision shows that in the third column, which refers to the time from which period begins to run, specifically provides it to be from the date of dismissal. It is not disputed that no application under Section 5 of the Limitation Act was filed along with the aforesaid application seeking condonation of delay in filing the application for restoration.

9. The Courts below while relying upon the ratio in *Noharlal Verma vs. District Co-operative Central Bank Ltd. Jagdalpur*, AIR 2009 SC 664 and *Damodaran Pillai and others vs. South Indian Bank Ltd.*, AIR 2005 SC 3460, held that period of limitation for filing an application seeking restoration of a case dismissed in default would start from the date of order and not the knowledge thereof.

10. Learned counsel for the petitioner has emphatically urged that technicalities of law ought not to come in the way and the Courts have inherent powers to condone the delay that may have occurred in view of the provisions reproduced above. It is further argued that the



period of limitation should be reckoned from the date of knowledge i.e. 13.03.2022, as pleaded in the application under Order 9 Rule 9 CPC.

11. Learned counsel for the petitioner has placed reliance upon ***Hiren Singha Roy vs. Howrah Improvement Trust***, 2001(1) SCT 615 to contend that the Hon'ble Apex Court had condoned the delay of about 11 months in filing the application for restoration of an appeal dismissed in default.

12. There is no dispute with regard to ratio in ***Hiren Singha Roy's case*** (supra) but the same is distinguishable on facts. In the said case, the default was on account of the applicant's lawyer having fallen ill who was medically advised bed rest and was accordingly confined to bed and as such, was prevented from appearing before the division bench on the date the matter was listed and was, thus, the same was dismissed. The plea raised was not opposed on facts nor any reply was filed to the application for restoration. Even before the Apex Court the factum of the counsel having fallen ill was not disputed. It is in the light of the peculiar facts noticed in that case the delay was condoned.

13. In the present case, the ground set up by the petitioner is of having noted a wrong date, which has been discussed in detail by the first Appellate Court and a finding has been returned that the same does not appear to be *bona fide* from the conduct of the plaintiff. Nothing has been brought to the notice of this Court to counter the said finding nor any contention has been raised in that regard.

14. The Hon'ble Supreme Court of India in ***Ragho Singh vs.***



***Mohan Singh and others*, (2001) 9 SCC 717**, laid down that the condonation of delay is not permissible in the absence of any application. The undisputed fact emerging from the record, which have not been controverted during the course of hearing is that neither any application seeking condonation of delay had been filed at the first instance nor after the trial Court dismissed the application for restoration vide order dated 27.03.2024.

15. Learned counsel for the petitioner has not been able to point out any contrary view to the aforesaid.

16. It would be apposite to notice that trial Court also examined the conduct of the plaintiff-petitioner while making the following observations:-

It is further pertinent to note that it is a very convenient argument to raise for a party that he noted down wrong date or to allege that he had taken down date with a difference of several months and then conveniently claim that within thirty days of any such concocted date, he applied for restoration of his suit. Parties and their counsel usually furnish their self serving affidavits in this regard as well. If such argument is accepted, then it will become a very convenient tool in the hands of a party to have their cases restored when they themselves did not appear to pursue their case in earnest. On perusal of the main file, it appears that defendant was proceeded against exparte in the said case and he had moved an application for setting aside exparte order passed against him on 5.10.2020. Thereafter, the case was fixed for 26.11.2020 for the plaintiff/applicant to file his reply.



He did not file his reply on the said date. The case was again continuously adjourned to 24.12.2020, 19.2.2021, 25.2.2021, 7.7.2021, 2.11.2021 and thereafter, it was fixed for 13.12.2021. On none of the said dates, plaintiff/applicant had filed his reply. Ultimately, on 13.12.2021, none appeared on behalf of plaintiff whereas the counsel for defendant was very much present on the said date. The contention raised by the plaintiff that he had noted a date which was four months ahead of the date given by the Court does not appear to be bonafide plea and from the abovesaid conduct of plaintiff, it appears that his non-appearance was also not bonafide. In such circumstances, there is no merit in the application in hand. Same is time barred and accordingly dismissed. Fie be consigned to the record room after due compliance.”

17. In view of the above discussion, this Court is of the view that the impugned orders passed by the Courts below are in accordance with the law laid down by the Apex Court and do not suffer from any irregularity or infirmity, much less perversity that would warrant interference by this Court.

18. Accordingly, finding no merit in the present petition, the same is dismissed.

September 18, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No