



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

**CM-11025-CII-2024 in/and
CR-2479-2020**

Date of Decision: July 25, 2024

Government Senior Secondary School, Bhogiwal ...Petitioner

Versus

Mohan Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Anil Kumar Garg, Advocate for the petitioner.

Mr. Sunny Singla, Advocate for respondent Nos.39, 40 and 77.

DEEPAK GUPTA, J.(Oral)

CM-11025-CII-2024

For the purpose of the disposal of the main petition, notice of the application was issued to the respondents.

Appearance on behalf of the respondents has been made. Learned counsel for the respondent Nos.39, 40 and 77 has no objection to allow the application.

The application is allowed and the main case is taken on Board for hearing today itself.

Main Case

By way of present petition, petitioner assails the order dated 17.09.2022 (Annexure P-5) passed by learned Civil Judge (Jr. Divn.), Malerkotla in Civil Suit No.728 of 2015, titled as **“Government Senior Secondary School, Bhogiwal v. Mohan Singh and others”**, whereby suit was dismissed in default for not depositing the necessary service charges for

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serving defendant Nos.96 and 46-A. Prayer is also made to set aside the order dated 08.01.2020 (Annexure P-8) whereby the application for setting aside the abovesaid order was dismissed.

2. Learned counsel for the petitioner (plaintiff before the Trial Court) points out that vide one of the impugned order dated 17.09.2019 (Annexure P-5), the suit qua defendant Nos. 96 and 46-A has been dismissed for non-compliance regarding not depositing of the process fee. However, learned counsel then points out towards Annexure P-1, the copy of the application which had been moved by the plaintiff on 26.08.2019, i.e. much prior to 17.09.2019, praying for depositing necessary *munadi* fee for summoning defendant Nos.96 and 46-A. The necessary charges were assessed and as per the order of the Court, an amount of ₹50/- was deposited. Learned counsel contends that this fact was brought to the notice of the Court by moving application under Order 9 Rule 4 CPC (Annexure P-6), but the application dismissed by way of another impugned order dated 08.01.2020 (Annexure P-8) by holding the application to be barred by limitation.

3. After hearing learned counsel for the petitioner, this Court is of the view that when the Court itself was at fault in dismissing the suit qua defendant Nos.96 and 46-A, despite the fact that necessary compliance had already been made, the Court could not have dismissed the application for restoration by taking the ground of limitation. Both the impugned orders are hereby set aside.

Present petition is allowed accordingly.

The Trial Court is directed to proceed further in accordance with law.

July 25, 2024

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(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No