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

CWP-22925-2024

Date of Decision: 10.09.2024

Om Parkash

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Anupal Singh, Advocate and
Mr. Manu Sachdeva, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India *inter alia* seeking a writ in the nature of Certiorari for setting aside the order dated 14.08.2024 (Annexure P-7), passed by learned Financial Commissioner, Haryana, whereby an application submitted by the petitioner seeking restoration of his earlier application bearing CM No.158 of 2023-24 praying for restoration of the main case (ROR No.380 of 2019-20) which was dismissed in default; has been dismissed.

2. Briefly, the petitioner filed a Revision Petition (ROR No.380 of 2019-20), which was dismissed in default vide order dated 05.06.2024 (Annexure P-3). It appears that the petitioner filed an application (CM No.158 of 2023-24) seeking restoration of the main case (ROR No.380

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of 2019-20), however the said application was also dismissed in default vide order dated 11.07.2024 (Annexure P-5).

2.1 It transpires that the petitioner again filed another application bearing CM No.176 of 2023-24 in ROR No.380 of 2019-20 seeking restoration of his earlier application (CM No.158 of 2023-24), which was filed for restoration of the revision petition (ROR No.380 of 2019-20).

2.2 The second application bearing CM No.176 of 2023-24 has been dismissed by learned Financial Commissioner, Haryana vide order dated 14.08.2024 (Annexure P-7).

3. Learned counsel for the petitioner submits that the learned Financial Commissioner, Haryana has dismissed the application bearing CM No.176 of 2023-24 vide order dated 14.08.2024 (Annexure P-7) only on the account that the petitioner could not produce the relevant case law in support of his submission that a second application seeking restoration of the application which was filed earlier for restoration of the main case (ROR No.380 of 2019-20) and was dismissed in default, was maintainable in law.

3.1 It is submitted by learned counsel for the petitioner that the petitioner had requested for a short accommodation to produce the said case law in support of his submission, however, the said request was not considered by the concerned Officer and he proceeded to dismiss the second application. Learned counsel for the petitioner undertakes that the petitioner would be represented by his counsel on each and every date of hearing as fixed by learned Financial Commissioner, Haryana.

4. Notice of motion.

5. Ms. Upasana Dhawan, AAG, Haryana, who is present in the



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Court, accepts notice on behalf of the respondent/State, submits that the petitioner had been afforded many opportunities to argue the revision petition, however, since the matter was being unnecessarily adjourned and on the date fixed i.e. 05.06.2024, since there was no representation on behalf of the petitioner, accordingly, the revision petition (ROR No.380 of 2019-20) was dismissed in default and even the application (CM No.158 of 2023-24) submitted by the petitioner seeking restoration of the revision petition was also dismissed in default as there was no representation on his behalf.

6. I have learned counsel for the parties and perused the paper book with their able assistance.

7. As regards the order dated 14.08.2024 (Annexure P-7) is concerned, apparently the application bearing CM No.176 of 2023-24 seeking restoration of earlier application (CM No.158 of 2023-24) filed by the petitioner for restoration of the revision petition (ROR No.380 of 2019-20) has been dismissed on the ground that the counsel for the petitioner could not produce the relevant case law in support of his submission that a second restoration application was maintainable.

7.1 In fact, there is no dispute as regards the maintainability of the second restoration application, which is clearly spelt out in a Division Bench judgment of this Court in the case of ***“Bhajan Singh vs. Ganeshi Devi”***, ***1978 AIR Punjab and Haryana 257***, wherein the following observation was made:

“2. The matter in issue is not res integra. In Abdul Rahman Shah and others v. Shahana, AIR 1970 Lahore 304, Petman, J., expressed the opinion that an application under Rule 9 of Order 9 of the Civil Procedure Code was competent if it sought



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the restoration of an earlier application seeking restoration of the suit in the event that the suit and the said previous application had both been dismissed for default. Reliance was placed by Petman, J., on the provisions of section 141 of the Code. That section stood thus when the impugned order was made :

"The procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction."

*The provisions of the section are very wide in there amplitude and there is no reason why any restricted meaning should be attached to them in the absence of any indication to that effect in the language employed. An application under Order 9, Rule 9 of the Code is certainly a proceeding in a Court of civil jurisdiction and, therefore, the procedure provided in the Code in regard to suits has to be followed in respect thereof. In other words, if an application of that type is dismissed for default, the procedure available to the aggrieved party would be the same as is open to a plaintiff when his suit is dismissed for default. This was also the opinion expressed by a Full Bench in **Nathu Prasad v. Singhai Kapurchand, AIR 1976 Madhya Pradesh 136.***

*3. We might add that the view that an application is competent for restoration of a previous one dismissed for default when such previous one seeks a restoration of the suit which was itself dismissed for default was also expressed in **Lok Nath and others v. Mst. Satan Bai, AIR 1923 Lahore 302(2), Ganesh Prasad v. Bhagelu Ram, AIR 1925 Allahabad 773 and Nand Lal v. Jetha Ram, AIR 1929 Lahore 878**, none of which however, refers to the provisions of section 141 of the Code; while no decision to the contrary has been cited before us."*

8. Be that as it may, the learned Financial Commissioner, Haryana could have allowed the said application on certain terms may be by imposition of costs, however, no such course has been adopted. It is well

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settled that the matter should be decided on merits rather than on technicalities.

8.1 In view of the above, order dated 14.08.2024 (Annexure P-7) is set aside and the Writ Petition is accordingly partly allowed. The application bearing CM No.176 of 2023-24 stands allowed and as a consequence thereof, the earlier application bearing CM No.158 of 2023-24 is ordered to be restored on the board of learned Financial Commissioner, Haryana, who shall decide the same after giving due opportunity of hearing to the petitioner.

9. The instant Writ Petition is disposed of, accordingly.

10. All pending application(s), if any, shall also stand closed.

10.09.2024*Himani***(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No