

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2704-2018 (O&M)
Date of Decision:-26.04.2024

Har Narain

... Petitioner

Versus

Sahib Ram and Others

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Argued by :-

Mr. Kul Bhushan Sharma, Advocate
for the petitioner.

Mr. Ravi Yadav, Advocate
for respondents No.1 to 7.

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RITU TAGORE, J.

1. This revision petition is directed against the order dated 07.04.2018 (Annexure P-1) passed by learned Civil Judge (Junior Division), Hathin, District Palwal allowing the application for restoration of suit bearing No.CS-223-2015 titled as Sahib Singh and Others vs. Har Narain and Others.

2. Learned counsel for the petitioner (defendant No. 1 before the learned trial Court) submitted that respondents No.1 to 7 (plaintiffs before the learned trial Court and now herein referred to as the plaintiffs) instituted

a civil suit captioned above, for declaration and permanent injunction against the petitioner and respondents No.8 to 18 (herein referred to as the defendants), *inter alia* on the grounds that they and present perma defendant No.19 are lawful owners in possession of the suit land, detailed in the plaint; that the defendants, have no right to treat suit land as surplus and authority to allot the same to any stranger, with further prayer to declare the revenue record coming in favour of the defendants as illegal and wrong and not binding upon the rights of the plaintiffs and perma defendant No.19; and is further liable to be corrected in their favour with consequent relief for a decree of permanent injunction, restraining defendants from interfering in their peaceful possession or allotting or alienating the suit land to any one, as detailed in the plaint (Annexure P-4).

3. Learned counsel for the petitioner (defendant No.1) stated that contesting defendants upon appearance in the suit, filed their written statement (Annexure P-5) and controverted the stand of the plaintiffs. Since parties were at variance, learned trial Court framed the issues and posted the case for evidence of the plaintiffs. However, on 26.03.2013 due to non-appearance of plaintiffs and their counsel, the suit was dismissed by the learned trial Court (Annexure P-6).

4. It is stated by the learned counsel for the petitioner (defendant No.1) that plaintiffs moved an application for restoration of the suit on 31.03.2015 (Annexure P-2), there upon contesting defendants filed the reply (Annexure P-3) resisting the application being highly time barred and not maintainable. However, learned trial Court vide impugned order allowed the application and restored the above-titled suit. It is stated that learned trial

Court materially erred in restoring suit without there being any application under section 5 of the Limitation Act, 1963 for condonation of delay, and further without there being any sufficient and acceptable explanation for the delay of more than two years in filing the application.

5. Learned counsel for the petitioner (defendant No.1) next stated that the plea of negligence of the counsel as coined by the plaintiffs is not made out from any evidence and further, party should also require to remain diligent to pursue its case, which is completely lacking in present case. Additionally, learned counsel also contended that plaintiffs had raised a false plea of issuance of threat by the defendants (respondents), alleging interference in the plaintiffs' alleged possession on 15.03.2015, attributing knowledge to them of dismissal of their suit, in order to cover the period of limitation. However, presented no evidence to support the alleged claim. Learned counsel stated that order of restoration of the suit dated 07.04.2018 (Annexure P-1) is wholly unsustainable in eyes of law and liable to be set aside. To support his contentions, learned counsel referred to judicial pronouncements titled as **Bata India Limited vs. Ashwini Kumar Sareen, 2013(5) RCR (Civil) 259** and **Surinder Kaur and Another vs. Sameer Bhatia, 2011(5) RCR (Civil) 811**, observing that casual and irresponsible approach of litigants in conducting a case should not be countenanced.

6. Per-contra, learned counsel for plaintiffs (respondents No.1 to 7) submitted that order is perfectly valid and was passed after appreciation of the facts of the case. Learned counsel stated that present revision was instituted when the case had reached at final stage of arguments after the

order of restoration of suit, suggesting their acquiescence and participation in the proceedings of the case, thereby debars the defendants from challenging the order of restoration after inordinate delay. Further, fair principles of jurisprudence demand that rights of the parties should be determined on the merits of the case. Learned counsel stated that plaintiffs gave sufficient explanation for the delay in filing the application and that was accepted by the learned Trial Court. Learned counsel stated that Section 5 of the Limitation Act 1963 does not provide that a written application for condonation must be filed before the learned Court. To support his submission, learned counsel has referred to **Firm Kaura Mal Bishan Dass vs. Firm Mathra Dass Atma Ram, Ahmedabad and Others, 1959 AIR (Punjab and Haryana) 646**. Learned counsel for the plaintiffs submits that impugned order has been passed on judicious consideration based on factual and legal aspects. A prayer is made to dismiss the petition, being devoid of merits. In support of his contention, learned counsel has referred to **Raj Kishore Pandey vs. State of U.P. and Others, 2009(4) RCR (Civil) 673**.

7. I have heard learned counsel for the parties and have gone through the paper-book with their valuable assistance.

8. It is a matter of record that plaintiffs (respondents No.1 to 7) filed a civil suit for declaration and permanent injunction (Annexure P-4) against defendants (petitioner and respondents No.8 to 18) and said suit was dismissed vide order dated 26.03.2013 (Annexure P-6), for non-appearance of the plaintiffs and their counsel. It is also a matter of record that an application for restoration of suit was filed by the plaintiffs on 31.03.2015

(Annexure P-2), which was contested by defendants vide their reply (Annexure P-3). Learned Trial Court after hearing the parties, allowed the application (Annexure P-2) and restored the suit vide impugned order dated 07.04.2018 (Annexure P-1).

9. It is admitted position that after the restoration of the suit, parties led their evidence and suit had reached the final stage of arguments. The petitioner (defendant No.1) has impugned the order, primarily on following grounds:-

- i) That no cogent and sufficient explanation has tendered by the plaintiffs (respondents No.1 to 7) for the delay of two years in filing the restoration application;
- ii) the application for condonation of delay was not supported by application under Section 5 of Limitation Act 1963;
- iii) the learned Trial Court failed to appreciate the above material infirmities in the version of plaintiffs, while allowing the aforesaid application.

10. Perusal of paper-book and other record tendered by counsel for the parties during course of arguments reveal that application for restoration of suit (Annexure P-2) was not supported by written application for condonation of delay under Section 5 of Limitation Act, 1963, however, same was supported by an affidavit of Sahib Ram-plaintiff No.1. In **Firm Kaura Mal Bishan Dass case (supra)** an objection was raised that no formal application under Section 5 of Limitation Act, 1963 supported by the affidavit was presented along with the appeal explaining the delay. This

Court while placing reliance on **Mt. Kulsocmun Nissa vs. Noor Mohammad, AIR 1936 Allahbad 666**, where in it was observed that *‘the first ground on which the appeal has been dismissed by the lower appellate Court is that the plaintiffs had not made any formal application for an extension of time under Section 5. Limitation Act, and that, therefore, their appeal against Hakim Shyam Sunder Lal was beyond time. In our opinion the Court below has erred in exercising its discretion in this matter’*, concluded that *‘the discretion under Section 5 has to be a judicial discretion and not an arbitrary one. Merely, because there was no written application filed by, the appellant was hardly a sufficient ground for refusing him the relief, if he was otherwise entitled to it.’* It was further observed that *‘the language of Section 5 of the Limitation Act does not provide that, an application in wrong must be filed before relief under the said provision can be granted.*

11. In the spectrum of judicial precedents and affidavit of the plaintiff No.1 accompanying the application for condonation of delay, the point of challenge raised by the present petitioner is answered against him, holding that non-filing of written application under Section 5 of Limitation Act 1963 was not fatal, so as to reject the prayer of the plaintiff No.1 for restoration of their suit.

12. Now turning to the other ground of challenge i.e. the learned Trial Court failed to appreciate that plaintiffs (respondents No.1 to 7), provided no ‘sufficient cause’ for the delay in filing the application for restoration of the suit, it is held that technicalities should not allow to come in the administration of justice. The consideration of existence of ‘sufficient

case' is discretionary power with the Court, which is to be exercised on sound principles of law and not on mere technicalities.

13. Before this aspect is considered on merits, it is apposite to go through the provisions of Order 9 Rules 8 and Rule 9 CPC, which are as under:-

“8. Procedure where defendant only appears.—Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. Decree against plaintiff by default bars fresh suit.—

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.”

14. The plaintiffs (respondents No.1 to 7), in their application (Annexure P-2) pleaded that their counsel was from out station and did not come on due date of hearing on 26.03.2013 and even did not inform them about the dismissal of the suit. It is only when defendants (present petitioner and respondents No.8 to 11) threatened to interfere in their peaceful possession, they came to know about dismissal of the suit. It was also pleaded that two matters were pending before the Court with same title and one of the plaintiffs namely Sahib Ram, being old and rustic person, could not come to know about the dismissal of the suit, that led to delay in filing the application. In support of the application (Annexure P-2), Sahib Ram also filed his affidavit.

15. The learned trial Court, after considering the averments of the parties and guided by the basic tenets of law that the rights of the parties should be examined on merits and not fettered by technicalities, and to advance the cause of justice, allowed the application and restored the suit. Further to balance the equities, learned trial Court also imposed costs on the plaintiffs (respondents No.1 to 7). To the considered opinion of this Court, the learned trial Court adopted a correct and judicious approach, by permitting the parties to have their rival claims decided on merits.

16. Furthermore, no benefit could have been derived by the plaintiffs by getting their suit dismissed. Rather, this would have put them at disadvantageous position. Order 9 Rule 9, CPC provides that when suit is wholly or partly dismissed under Rule 8, which speaks of dismissal of suit on non-appearance of plaintiff(s), the plaintiff is precluded from bringing a fresh suit in respect of same cause of action. The defendants (petitioner and

respondents No.8 to 13), in their reply (Annexure P-3), pleaded that the plaintiffs were present in the Court premises but deliberately did not appear when the case was called. However, this seems implausible. If the plaintiffs never wanted to proceed with the case, they could have withdrawn the same by making a request before the learned Court. Furthermore, they would not have sought restoration of the suit. This suggests and demonstrates their willingness and interest in prosecuting their case. In these circumstances, the plea taken by the plaintiffs (respondents No.1 to 7) that their counsel could not appear on due date of hearing and did not intimate about the dismissal of the suit, appears plausible. No doubt, a party is also required to take follow-up action after filing a suit. Nonetheless, it is equally true, particularly where litigant is a rustic villager, that he always look upon his counsel for further necessary instructions. In the application, there are specific averments of the plaintiffs that they did not come to know of dismissal of their suit, as their counsel did not inform them. In given facts as discussed above, this explanation appears plausible and provide a sufficient cause for their non-appearance in the Court. The discretion as exercised by the learned trial Court in restoring the suit appears justified and calls for no interference.

17. Furthermore, another reason which impels this Court not to interfere in the impugned order is the fact that, after the revival of the suit, parties to the *lis* led their evidence to its full and when the case reached at the final stage of arguments, the instant revision petition was filed. Given these facts, to close the case without allowing it to reach its logical end and deny the parties the opportunity to enjoy the fruits of their litigation, would be to

cause injustice to them. It is therefore, held that learned trial Court has properly and judiciously exercised the jurisdiction vested in it.

18. For the reasons given above, there appears no illegality in the impugned order, wanting interference in exercise of revisional jurisdiction under Article 227 of the Constitution by this Court. The case law relied by the petitioner on given facts, failed to provide assistance to his cause.

19. For the reasons stated, this Court finds no merit in this revision petition, and same is, hereby, dismissed. Accordingly, stay granted on 04.09.2018 by this Court, stand vacated.

20. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

26.04.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

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