



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

Sr. No.116-1

**CR-5712-2018 (O&M)
Date of Decision: 01.08.2025**

AMRITBIR SINGH GULATI

....Petitioner

Versus

AMARJIT KAUR THROUGH HER LRS AND OTHERS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. R.S. Thakur, Advocate
for the petitioner.

Mr. Rakesh Gupta, Advocate
for respondents No.1(i) and 2.

None for respondents No.3 to 5.

None for respondent No.6.

None for respondent No.7.

None for respondent No.8.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 29.10.2013 (Annexure P-1), passed by learned Appellate Court, whereby an appeal filed by the petitioner was dismissed, for want of prosecution. Further, the order dated 07.07.2017 (Annexure P-2), has been challenged, whereby an application for seeking restoration of the appeal was also dismissed.

As culled out from the paperbook, the facts germane to be noticed are that, civil appeal i.e. CA-1T, dated 28.01.2012, titled '*Amritbir*



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Singh Gulati Vs. Amarjit Kaur and others', was pending before the Court of learned Additional District Judge. However, during the pendency of the same, when the petitioner (who was appellant before learned Appellate Court), had not made appearance and had also not filed the correct address of respondent No.8, for effecting service, the impugned order dated 29.10.2013 was passed by learned Appellate Court, which is reproduced in verbatim, as hereingiven:-

“XXX XXXX XXX XXXX

Address of respondent No.8 has not been filed, despite last and final opportunity. Even costs have not been paid as per previous order. No one has turned up on behalf of appellant despite calling the case several times since morning. It is already 4 PM. As such no ground is made out for further adjournment. Accordingly, the present appeal is dismissed in default. Record of trial court be returned with copy of this order. File be consigned to the record-room.”

Thereupon, the petitioner/appellant had filed an application for restoration of the appeal, which was also dismissed, vide impugned order dated 07.07.2017, copy whereof is Annexure P-2.

Being aggrieved, the petitioner has filed the present revision petition, to assail the aforesaid orders.

Counsel for the petitioner, as well as respondents No.1(i) and 2, heard.

Keeping in view the manner of dismissal of the appeal by learned Appellate Court and also considering the dismissal of the application for restoration of the appeal, the counsel for the petitioner has brought to the notice of this Court about various zimini orders passed by learned Appellate Court, copies whereof start from Annexure P-3 at page No.21, which reads



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upto Annexure P-22 at page No.59 of the paperbook. Perusal of various zimini orders reveals that the appeal was initially received by entrustment, in the Court of learned Additional District Judge, on 28.01.2012 and there was a caveat petition, already filed. Thereupon, notice was ordered to be issued to the caveator for 10.02.2012. On 10.02.2012, Mr. Atul Bansal, Advocate, had put in appearance, on behalf of all the respondents and undertook to file Vakalatnama on the next date of hearing and the case was adjourned to 24.02.2012, for further proceedings. On the next date i.e. 24.02.2012, Mr. Gagandeep Singh, Advocate, had put in appearance on behalf of respondents No.1, 2, 6 and 7 and filed Vakalatnama on their behalf and he had sought adjournment, to file Vakalatnama, on behalf of the remaining respondents. As such, the appeal was adjourned for 03.04.2012. Thereafter, no further Vakalatnama was filed, at the behest of the remaining respondents and also, no observation was made by the Court concerned, *vis-a-vis*, their service and the case proceeded further, qua application under Order 39 Rule 1 and 2 CPC.

It was only on 05.05.2012, that the case was received by transfer, by the other officer and it was observed that respondents No.3 to 5 have not been served in the present case and therefore, the case was fixed for 16.05.2012, for service of the said respondents and it remained pending for the said purpose only, till 15.06.2012, when the case adjourned for 21.08.2012. Furthermore, it was only on 21.08.2012, that it was observed by the Court concerned that respondents No.3 to 5 and 8 be summoned again, for 04.10.2012 and the case was adjourned further, time and again, for the said purpose. Even, the correct address was not filed and the case was adjourned for one reason, or the other, on this count.



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Ultimately, the impugned order dated 29.10.2013 was passed, wherein it was observed about the address of respondent No.8 having not filed. It is pertinent to mention that the fault lies primarily with the Court, which did not have grip over the progress of the case and had adjourned it haphazardly, as observed aforesaid. Initially, Mr. Atul Bansal, Advocate, had appeared on behalf of all the respondents. Thereafter, Mr. Gagandeep Singh, Advocate, had appeared on behalf of respondents No.1, 2, 6 & 7 and he had given an undertaking to file Power of Attorney, on behalf of the remaining respondents. However thereupon, the Court remained oblivious of the Power of Attorney, not having filed qua the remaining respondents and proceeded further with the application under Order 39 Rule 1 and 2 CPC. It was subsequently, that the process was initiated for service of the respondents No.3 to 5 on 05.05.2012. Then again, the Court remained oblivious for service of respondent No.8, the process whereof was initiated, at a much later stage.

Perusal of all the zimini orders placed on record, reveals about the Court to have not proceeded in the manner, as it ought to be. Not only the Court concerned, but even, the counsel for the parties were not having grip over the progress of the case and they never brought it to the notice of the Court, about service having not effected upon all the respondents and the counsel having made appearance, at first instance, on behalf of all of them and thereafter, the subsequent lawyer having filed Power of Attorney, on behalf of four respondents and having given an undertaking to file Power of Attorney, on behalf of the other respondents.

In the given circumstances, when the proceedings conducted by the Appellate Court, are itself faulty, the Court concerned ought to have



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considered the same, while considering the application for restoration of the appeal. Even though, a detailed order has been passed in the application for restoration of the appeal, on 07.07.2017, regarding dismissal of the appeal, but none of the zimini orders, has been appraised and the manner of progress of the appeal, as such, has not been observed. The impugned orders, as such, warrant interference.

In view of the aforesaid fact situation, the revision petition is hereby accepted and both the impugned orders are hereby set aside. The parties are directed to make appearance before learned Appellate Court and produce copy of this order. After receipt of copy of the order, learned Appellate Court, shall seek for the record from learned Trial Court and restore the appeal at its original number. Thereafter, it shall proceed further with the appeal, in the fitness of circumstances and pass an appropriate order, considering all the zimini orders.

In view of the aforesaid terms, the revision petition stands disposed of.

01.08.2025

Himanshu

**(ARCHANA PURI)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes/No