

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

2025:PHHC:058597



**CR-1411-2019(O&M)
Date of decision: 05.05.2025**

RANJIT SINGH**..Petitioner****Versus****KASHMIR SINGH****..Respondent****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Kushagra Mahajan, Advocate
for the petitioner.

Mr. Sachin Sharma, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein filed a suit for possession by way of specific performance of the agreement to sell. When the suit was fixed for leading his evidence, he absented on 17.11.2008, resulting in dismissal of the suit for non-prosecution. On 04.02.2009, he filed an application under Order IX Rule 9 of the Code of Civil Procedure, 1908, for restoration of the suit while alleging that he wrongly noted the next date on 17.01.2009 instead of 17.11.2008. Both the Courts have dismissed the application on the ground that the plaintiff failed to file application for condonation of delay.

2. On 10.02.2025, the following order was passed:-

“Learned counsel for the petitioner inter alia contends that the Courts have erred in refusing to restore the plaintiff’s suit for possession by way of specific performance by way of agreement to sell.

He submits that on 17.11.2008, the petitioner (plaintiff) or his counsel could not appear as they noted the next date of hearing as 17.01.2009. He submits that on that day, the case was fixed for further cross-examination of PW-1. He further submits that the application for restoration was filed on 04.02.2009, which was initially dismissed on 24.11.2009, however, in appeal,



the order passed by the trial Court was set aside but in the second round once again the application for restoration has been dismissed on 23.11.2015, which in appeal has been affirmed by the First Appellate Court. He submits that even in the absence of application for condonation of delay, the reasons stated in the application should have been considered by the Court for condoning the delay.

Notice of motion for 19.03.2025.

To be listed in the urgent list.”

3. It is evident that the Courts have taken a very narrow and conservative view. While deciding such applications, the approach of the Court should be pragmatic and they are expected to take a holistic view of the matter. It was plaintiff's first default. On payment of *ad valorem* Court fee, he has filed suit for possession by way of specific performance. The case was fixed for further cross-examination of PW-1. In absence of application for condonation of delay, the Court was required to examine the application for restoration. Once, the reasons for delay were pleaded in the application, there was no requirement to file a separate application.

4. Keeping in view the aforesaid discussion, the revision petition is allowed. The impugned orders passed by the Courts below are set aside while remitting the matter back to the trial Court for fresh decision after granting opportunity to the parties to record their evidence in the main suit.

5. The parties through their counsel are directed to appear before the trial Court on 29.05.2025.

6. All the pending miscellaneous applications, if any, are also disposed of.

May 05th, 2025

Ayub

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*

(ANIL KSHETARPAL)
JUDGE