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

**116** **CR-1563-2025(O&M)**
**Date of decision: 21.11.2025**

**Dharam Shala Rafai Aam Panchayat Mahajnaan, Sadhaura through Pawan Kumar**

**...Petitioner(s)**

**Vs.**

**D.A.V. Public School and others** **...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Munish Mittal, Advocate for the petitioner.

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**NIDHI GUPTA, J.**

Present Civil Revision Petition under Article 227 of Constitution of India has been filed by the petitioner/plaintiff against the orders dated 03.09.2014 (Annexure P-2) passed by learned Civil Judge (Junior Division), Bilaspur; whereby suit of the plaintiff has been dismissed in default and 30.07.2019 (Annexure P-7) passed by learned Additional Civil Judge (Senior Division), Bilaspur; whereby application of the petitioner to restore the suit has been dismissed, and order dated 08.10.2024 (Annexure P-9) passed by learned District Judge, Yamuna Nagar at Jagadhri; whereby appeal against order dated 30.07.2019 has been dismissed.

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2. Brief facts of the case are that on 11.06.2010, the petitioner had filed a Civil Suit (Annexure P-1) for permanent injunction restraining respondents No. 1 to 4 from interfering in the ownership and actual physical possession of the petitioner of the suit house. Vide order dated 03.09.2014 (Annexure P-2), the said Civil Suit was dismissed in default as "*Despite repeated calls about 7/8 times since morning and sufficiently awaited upto 02:55 PM. Plaintiffs have not turned up either in person or through any counsel. No further wait is justified. Hence, the present, suit stands dismissed in default. ……"* Thereafter, petitioner had moved an application dated 30.3.2015 (Annexure P-3) seeking restoration of the suit along with an application for condonation of delay in filing the restoration application. Respondents No. 1 to 4 had filed reply dated 28.08.2015 (Annexure P-4) to the said application of the petitioner. Vide order dated 30.07.2019 (Annexure P-7), the said application (Annexure P-3) of the petitioner was also dismissed for the following reasons: -

> "…… *The applicant has failed to produce on record any document to establish the fact regarding the eventuality or circumstances, due to which, he could not appear before the court during the hearing of the said suit, on the date fixed by the court. If it is believed that the applicant was held up due to any serious circumstances, anybody else or his counsel must have appeared before the court. The suit was dismissed after waited sufficiently till 2.55 PM. Moreover, the application for restoration of suit was filed on 30.03.2015, after delay of more than six months and no sufficient cause has been shown by the applicant/plaintiff for this delay, in*

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*filing of this application. It appears that applicant/plaintiff was non serious to pursue the suit as well as application for restoration of the said suit. No sufficient reason have been shown by the applicant for non-appearance on the date fixed or for delay in filing of the present application. In these circumstances, it cannot be said that applicant had really trying to appear before the court on the date fixed or he honestly intended to appear before the court on the date fixed. No sufficient cause was shown by the applicant for non-appearance. ……"*

3. Accordingly, application for condonation of delay was dismissed. Consequentially, application of the petitioner for restoration of suit was also dismissed being time barred.

4. Against the said order dated 30.07.2019, petitioner had preferred an Appeal before learned District Judge, Yamuna Nagar at Jagadhri. Vide order dated 08.10.2024 (Annexure P-9), the said Appeal of the petitioner has also been dismissed for the following reasons: -

"*17. A perusal of the said section and rule shows that an appeal against an order dismissing an application for condonation of delay is not maintainable. In fact, there is no right of appeal against such an order. Once it is so, the appeal in question against an order dismissing the application for condonation of delay is not maintainable. So far as order dismissing the application for restoration of the suit is concerned, it was in fact dismissed by the learned Civil Judge as time barred. Furthermore, in the presence of an order dismissing the application for condonation of delay against which no appeal under the above stated provisions or under*

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*any other law for the time being in force is maintainable, appeal against the order dismissing the application for restoration of the suit as time barred cannot be said to be maintainable as the said application has not been decided on merits."*

5. It is *inter alia* submitted by learned counsel for the petitioner that the petitioner had been continuously appearing in the case. But his brother had assured him that he will look after the proceedings in the case on 03.09.2014. Accordingly, petitioner had not appeared before the Court on 03.09.2014 which led to the dismissal of the suit in default. It is submitted that each case has to be decided on merits and no party should be thrown out for absence; and every *lis* has to be determined on its merits instead of its technicality. Moreover, non-appearance of the petitioner before the Court on 03.09.2014 was neither intentional nor deliberate as brother of the petitioner had assured him that he will pursue the case but he did not appear before the Court. Hence, the case was dismissed for non-prosecution.

6. It is further submitted that delay in filing the restoration application occurred only because the petitioner is residing at Ambala and his brother is residing at Sadhaura and the petitioner came to know only when he came to Sadhaura. Learned counsel for the petitioner accordingly prays that the present Civil Revision be allowed; and the impugned orders be set aside.

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7. No other argument is raised on behalf of the petitioner/plaintiff. I have heard learned counsel for the petitioner and perused the case file in great detail. I find no merit in the submissions advanced on behalf of learned counsel for the petitioner.

8. It is my considered view that the above said facts are self speaking and amply reflect the utterly casual and cavalier attitude adopted by the petitioner in pursuing the present litigation. The duty lies upon the petitioner to be vigilant towards his rights to pursue litigation diligently. The petitioner cannot totally sleep upon the matter for after allegedly entrusting the same to his brother. In this situation, it would be apposite to refer to recent judgment of the Delhi High Court in **Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., (Delhi): Law Finder Doc Id # 887148** holding that*:*

> *"11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth*

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*by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted."*

9. In the facts and circumstances of the case, it would be apposite to refer to landmark judgment of the Hon'ble Supreme Court in **Shiv Cotex v. Tirgun Auto Plast P. Ltd. (SC) : Law Finder Doc Id # 271160***;* wherein it is held that if the plaintiff did not produce evidence despite grant of numerous opportunities, then the suit of the plaintiff be dismissed. The Hon'ble Supreme Court has further held that: -

*"C. Civil Procedure Code, Order 17, Rule 1 - Grant of adjournments during pendency of suit - Adjournments have grown like cancer corroding the entire body of justice delivery system - It is sad, but true, that the litigants seek and the courts grant adjournments at the drop of hat - Though provisions of Order 17 Rule 1 of C.P.C. are not mandatory, but adjournments beyond three may be granted for justifiable cause - Justifiable cause means a cause which is not only sufficient cause as contemplated under Order 17 Rule 1 of C.P.C., but unavoidable and sort of compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the Court and such like cause - The list is only illustrative and not exhaustive."*

The relevant para of the said judgment is as under:-

*"7. Thereafter, the suit was fixed for the evidence of the plaintiff on November 1, 2006. However, no evidence was let*

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*in on that day. The matter was then adjourned for the evidence of the plaintiff on March 2, 2007. On that day also the plaintiff did not produce evidence and the matter was adjourned to May 10, 2007. On May 10, 2007 again plaintiff did not produce any evidence. The trial court was, thus, constrained to proceed under Order 17 Rule 3(a) of the Civil Procedure Code, 1908 (for short, 'CPC') ……"*

10. In the present case, no such calamitous and unavoidable circumstances have been brought to the notice of this Court that would justify the non-appearance of the petitioner. The reason given by the petitioner for non-appearance is that he had entrusted the matter to his brother. However, clearly, the petitioner did not bother to keep track of what transpired on 3.9.2014; thereby resulting in substantial delay in filing the Restoration application. The same do not constitute sufficient cause.

11. The present Civil Revision Petition is hereby **dismissed**.

12. Pending application(s), if any, also stand(s) disposed of.

**21.11.2025** **(NIDHI GUPTA)**
Divyanshi **JUDGE**

**Whether speaking/reasoned: Yes/No**
**Whether reportable: Yes/No**

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