

**284+105****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CR-6219-2019 (O&M)****Date of Decision : 13.11.2025**

Gurdeep Singh & Anr

... Petitioner(s)

Versus

Jagtar Singh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Chand Sharma, Advocate for the petitioners.

Mr. G.P.S. Bal, Advocate with
Mr. Paras Khatri, Advocate for the respondents.**ALKA SARIN, J. (Oral)****CM-22411-CII-2025**

1. This is an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking amendment in the grounds of revision as well as the prayer clause.

2. For the reasons stated in the application the same is allowed, subject to all just exceptions.

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3. The present revision petition has been filed challenging the order dated 15.10.2015 whereby the suit of the plaintiff-petitioners was dismissed in default under Order 9 Rule 8 CPC and the order dated 16.07.2019 whereby the application filed for restoration was also dismissed.

4. Learned counsel for the petitioners would contend that on the date when the suit was dismissed for non-prosecution i.e. 15.10.2015, a wrong

date was noted and within a period of one month i.e. 16.11.2015, the application for restoration was filed. Learned counsel has further pointed out that though the order dated 15.10.2015 simply states that the plaintiff-petitioners had not appeared despite the case being called several times and accordingly the suit was dismissed under Order 9 Rule 8 CPC, however, on the application filed for restoration, a detailed order has been passed on 16.07.2019. Learned counsel has further pointed out that in the order dated 16.07.2019 the Trial Court while considering the application under Order 9 Rule 9 CPC has gone on to comment on the conduct of the parties and has held that the counsel for the plaintiff-petitioners failed to appear though he was present on 15.10.2015.

5. *Per contra* learned counsel for the defendant-respondents would contend that the conduct of the plaintiff-petitioners needs to be seen and that the counsel for the plaintiff-petitioners though present in Court did not appear in the present matter and that the suit was got intentionally dismissed in default to escape the orders of the Court whereby the evidence of the plaintiff-petitioners was going to be closed by order. It is further the contention of the learned counsel that the plaintiff-petitioners had failed to lead their evidence despite numerous opportunities having been granted.

6. I have heard the learned counsel for the parties.

7. In the present case the counsel for the plaintiff-petitioners failed to appear on 15.10.2015. Learned counsel for the plaintiff-petitioners on a query by the Court has categorically stated that this is the only date on which the counsel for the plaintiff-petitioners failed to appear. On 15.10.2015 the following order was passed by the Trial Court :

“ No one appeared on behalf of plaintiff today despite case

being called for several times till 03.00 pm. Accordingly, the present suit is dismissed in default under Order 9 Rule 8 CPC. File be consigned to the record room”

8. On an application for restoration, which was filed within a period of 30 days, the Trial Court went on to frame issues and take evidence which is not even required under Order 9 Rule 9 CPC. Order 9 Rule 9 CPC reads as under :

“ 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.”

9. As per the provisions of Order 9 Rule 9 of CPC, in case sufficient cause is made out, the application was to be allowed upon such terms as to costs or otherwise as the Court may have thought fit. Hon’ble Supreme Court in the case of **Kamla Bai Vs. Harishankar Arora & Ors. [2010 (15) SCC 454]** has held that when non-appearance was only for one day, the suit should have been restored to its original number. In the present case also it has been stated by the learned counsel for the plaintiff-petitioners that it is only on one

date that the counsel for the plaintiff-petitioners failed to appear, which fact is not being controverted by the learned counsel for the defendant-respondents.

10. In view of the above, the present revision petition is allowed. The impugned orders dated 15.10.2015 and 16.07.2019 are set aside. The suit is restored to its original number and status, subject to payment of ₹30,000/- as costs to be paid to the defendant-respondents, which shall be a condition precedent. Since the suit relates to the year 2015, the Trial Court is requested to expedite the matter and not grant any unnecessary adjournments to either of the parties.

11. Disposed off accordingly. Pending applications, if any, also stand disposed off.

13.11.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/