



CR No. 5809 of 2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5809-2023 (O&M)
Decided on : 11.09.2025

Harchand Singh

.....Petitioner

Versus

Mahinder Singh @ Narinder Singh & Anr.

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:** Mr. H.P.S. Ghuman, Advocate,
for the petitioner.Mr. Kapil Khanna, Advocate
For respondent No.2.**DEEPAK GUPTA, J.**

The plaintiff, Harchand (petitioner), filed a suit for recovery of ₹1,96,000 under Order XXXVII CPC on 12.04.2019. Appearance for the defendants was recorded on 24.05.2019, who on the same day moved an application for leave to defend. The plaintiff repeatedly failed to file a reply to that application despite being granted numerous opportunities (14 dates were recorded). No one appeared for the plaintiff on 30.05.2022, and the trial Court dismissed the suit for default on that date (*Annexure P-2*). The plaintiff filed an application for restoration on 31.05.2022, which was dismissed on 03.05.2023 (*Annexure P-5*). The present petition challenges both these impugned orders and seeks restoration of the suit.

2. Learned counsel for the petitioner submits that non-appearance was due to the Covid-19 pandemic and points out that substantial rights of the plaintiff are involved (payment of court fee and recovery of ₹1,96,000). On the other hand, Learned counsel for the respondents emphasizes that the petitioner had availed 14 opportunities to file a reply and that the petitioner's counsel in fact appeared on most dates; therefore, the plea of non-appearance on 30.05.2022 being attributable to Covid-19 is misconceived and unexplained.



3. The power to dismiss a suit for non-prosecution and the power to restore a dismissed suit are discretionary powers exercised by the court in accordance with established principles. Courts must ensure procedural discipline but must also guard substantive rights of parties. Restoration is generally permitted, where sufficient cause for the default is shown or where, in the interest of justice, the court considers it appropriate, provided that the opposing party is adequately protected by the imposition of costs or other terms.

4. In summary suits under Order XXXVII CPC, procedural requirements for seeking leave to defend and for filing replies are important; and non-compliance may justify strong action by the trial court. However, dismissal for default is not invariably to be treated as absolute, and appellate or supervisory courts may set aside such orders in appropriate cases balancing conduct, prejudice and substantive rights.

5. The record shows repeated opportunities were granted to the petitioner to file a reply to the defendants' application for leave to defend. That prolonged inaction and the absence on the date of dismissal weigh heavily against the petitioner and so, the petitioner's conduct does not provide a convincing or consistent explanation for the final default. The Court must, accordingly, view the petitioner's conduct seriously. While the Covid-19 pandemic has in many cases furnished a legitimate explanation for non-appearance, the facts on record i.e., frequent earlier appearances by petitioner's counsel and multiple adjournments, do not make the pandemic plea a satisfactory explanation for the cumulative failure and the final non-appearance. The excuse, therefore, is at best weak.

6. However, in order to balance procedural discipline with substantive justice, despite the petitioner's unsatisfactory conduct, the Court must also consider that a substantial monetary claim (₹1,96,000) is involved and that the plaintiff has paid court fee for prosecution of the suit. Where valuable rights are at stake and prejudice to the defendant can reasonably be compensated, public policy and principles of justice may



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favour adjudication on merits, rather than permitting the dispute to be foreclosed solely on procedural default. Since the defendants were put to inconvenience by the petitioner's conduct, they are entitled to compensation for the prejudice occasioned. The imposition of a reasonable cost and the condition that the petitioner promptly resume prosecution and file the required reply are adequate and proportionate safeguards against prejudice.

7. As such, this Court considers that justice is best served by permitting restoration of the suit, subject to conditions that petitioner fairly compensate the respondents and does not cause further delay.

8. Consequently, the petition is allowed. The impugned orders dated 30.05.2022 (Annexure P-2) and 31.05.2023 (Annexure P-5) stand set aside, subject to payment of costs of ₹10,000 by the petitioner to the respondents/defendants. The costs shall be paid by demand draft in favour of the defendants and produced before the trial Court. The petitioner himself or through his counsel shall appear before the trial Court within four weeks from today along with the demand draft of ₹10,000 and thereupon, the trial Court shall restore the suit and proceed further in accordance with law. On the date to be fixed by the trial Court, the petitioner shall file his reply to the defendants' application for leave to defend and for that purpose no further opportunity shall be granted. The trial Court shall proceed expeditiously thereafter and deal with the defendants' application for leave to defend and the suit on its merits in accordance with law.

Petition disposed of in the above terms.

(DEEPAK GUPTA)
JUDGE

11.09.2025
Jiten

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