



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

**CR-6816-2024
Decided on : 14.05.2025**

Akash Kalra

..... Petitioner

Versus

Nisha Solanki and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Deepak Panghal, Advocate and
Mr. Vishal, Advocate for the petitioner.
(through video conferencing)

Mr. Shivansh Malik, Advocate
for Mr. Aaryan Suri, Advocate
for the respondents.

VIKRAM AGGARWAL, J (ORAL)

The instant revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 29.08.2024, passed by the Court of Civil Judge (Junior Division), Rohtak, vide which the application filed by the petitioner for restoration of the civil suit was dismissed.

2. A summary suit under Order 37 of the Code of Civil Procedure, 1908 (for short 'CPC') was filed by the petitioner-plaintiff for recovery of Rs.1,00,000/-. However, the said suit was dismissed in default vide order dated 02.03.2022 (Annexure P-1). An application (Annexure P-2) for restoration of the suit was moved on the very next day i.e. on 03.03.2022 which was opposed by way of a reply (Annexure P-3). Vide impugned order dated 29.08.2024, the said



application was dismissed leading to the filing of the present revision petition.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioner submits that the application for restoration of the suit had been filed on the very next day of the dismissal of the suit in default. The said application remained pending for over two years and has now been dismissed by way of the impugned order. Learned counsel submits that the impugned order is not sustainable as matters should be decided on merits and should not be rejected on technicalities. Learned counsel submits that due to an error, a wrong ground was taken in the application for restoration and the non-appearance of the petitioner in the Court on 02.03.2022 was unintentional and bonafide. He, therefore, submits that the impugned order be set aside.

5. On the other hand, learned counsel for the respondents-defendants has submitted that the application for restoration was rightly dismissed. He submits that the application for restoration was filed under Section 151 CPC whereas it should have been filed under Order 9 Rule 9 CPC. It has also been submitted that an erroneous ground was taken in the application that some counsel had appeared on behalf of the main counsel whereas actually, no one had appeared. He submits that under the circumstances, the trial Court did not commit any error in dismissing the application.

6. I have considered the submissions made by learned counsel for the parties.

7. The suit was dismissed in default on 02.03.2022. The order shows that in the pre-lunch session, neither the plaintiff nor his counsel appeared. Same was the position in the post-lunch session, as a result of which the suit was



dismissed in default. On the very next day, an application for restoration of the suit was moved wherein it was mentioned that since the main counsel was unwell, he had asked another counsel to appear who, however, could not appear in the pre-lunch session. However, on a request having been made, he appeared in the Court in the post-lunch session but the Court was not in session and subsequently, the petitioner came to know that the suit had been dismissed in default. Strangely, reply to the said application was filed in February, 2023 and the application has now been decided vide order dated 29.08.2024. The application, therefore, remained pending for almost 2½ years. In the considered opinion of this Court, even though the petitioner had taken an erroneous stand in the application, the Court should have examined the matter from a wider perspective. It is well settled that matters should be decided on merits and should not be rejected on technicalities. At times, obstinate stands are taken in applications. However, eventually, it is the interest of justice which has to be seen. Even if for the sake of assumption, it is accepted that whatever was stated in the application was incorrect, the Court could have restored the suit. The suit itself may have been decided before the application was taken up for hearing.

8. As regards the non-mentioning of the proper provision in the application, the same also would not affect the merits of the matter. It is not unknown that in *mufassil* Courts, many times much stress is not laid on the statutory provisions while filing applications, though it should be. Therefore, merely because the application was filed under Section 151 CPC and not under Order 9 Rule 9 CPC, the same would not be dismissed.

As a cumulative result of the aforesaid discussion, I do not find the



impugned order to be sustainable. Accordingly, the revision petition is allowed. The order dated 29.08.2024 is set aside, the application for restoration is allowed and the suit is restored to its original number. Parties may appear before the trial Court on 26.05.2024, for further proceedings.

Pending application(s), if any, shall stand disposed of accordingly.

14.05.2025
mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No