



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

(128)

CR-4070-2026 (O&M)
Date of Decision: **14.05.2026**

SIMARJEET KAUR

... Petitioner

Versus

MANINDER KAUR

... Respondent

-.-

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Karnesh Verma, Advocate
for the petitioner.

-.-

VIRINDER AGGARWAL, J. (Oral)

1. The petitioner moves this Court under Article 227 of the Constitution of India, invoking its extraordinary supervisory jurisdiction to impugn the legality, propriety, and jurisdictional competence of the order dated 02.04.2026 (**Annexure P-1**). By way of the impugned order, the learned Court below erroneously entertained and allowed the respondent-plaintiff's application for restoration, thereby reviving a suit previously dismissed for non-prosecution and directing its restoration to its original numerical file. This revision seeks to address the patent illegality inherent in the lower Court's exercise of discretion.

2. The foundational facts giving rise to the present proceedings are that a civil suit instituted by the respondent-plaintiff was pending adjudication before the learned Civil Judge and was listed on 21.08.2024 for filing of reply to the application under Order XXXIX Rules 1 and 2 of



the Code of Civil Procedure, 1908 (for short, “CPC”), as well as for arguments on the applications filed under Order I Rule 10 and Order VI Rule 17 CPC. On the said date, none appeared on behalf of the respondent-plaintiff and, after waiting till 4:00 PM, the learned trial Court dismissed the suit for want of prosecution.

2.1. Thereafter, the respondent-plaintiff moved an application seeking restoration of the suit on the grounds that her counsel could not appear before the Court due to illness and that the non-appearance was neither intentional nor deliberate. It was further pleaded that valuable civil rights of the respondent-plaintiff were involved and grave prejudice would ensue in case the suit was not restored.

2.2. The said application was contested by the present petitioner; however, the learned Civil Judge, vide the impugned order, allowed the application and restored the suit to its original position.

3. Aggrieved by the aforesaid order, the present revision petition has been preferred before this Court.

4. I have considered the submissions made by learned counsel for the petitioner and have perused the paper-book minutely with his able assistance.

5. Learned counsel for the petitioner has contended that the suit in question is vexatious and has been instituted solely with an oblique motive to harass the petitioner. It has been argued that the subject matter of the suit is fully covered by a binding family settlement and duly registered documents executed by the respondent-plaintiff herself and, therefore, no subsisting cause of action survives in her favour. It has further been



contended that the suit is barred under Order II Rule 2 CPC as well as by the principles of *res judicata* embodied under Section 11 CPC.

5.1. It has also been argued that the learned Civil Judge failed to appreciate that no sufficient cause was made out for restoration of the suit. According to the petitioner, the restoration application was neither signed by the plaintiff nor supported by an affidavit at the time of filing and, therefore, could not be treated as a validly instituted application in the eyes of law. It has further been contended that no documentary material was produced to substantiate the alleged illness of the counsel and even the authority of the counsel to represent the respondent-plaintiff was disputed on the ground that the authenticity of the power of attorney itself was questionable.

5.2. However, the issues relating to the alleged non-maintainability of the suit on account of *res judicata*, bar under Order II Rule 2 CPC, absence of cause of action, or the suit being vexatious and *mala fide*, do not fall for consideration while adjudicating an application for restoration of a suit dismissed in default. All such objections pertain to the merits of the controversy and remain open to be adjudicated during the course of trial.

5.3. So far as the restoration of the suit is concerned, it is evident from the record that the suit was dismissed in default on 21.08.2024 and the application seeking restoration thereof was instituted on 27.08.2024, i.e., within six days from the date of dismissal. The application was thus filed well within the prescribed period of limitation and cannot be said to suffer from any inordinate or unexplained delay. The record further reveals



that the suit had remained pending since the year 2017 and had been diligently prosecuted by the respondent-plaintiff till the date on which the default occurred.

6. The learned trial Court has rightly observed that the provisions of Order IX Rule 9 CPC deserve liberal construction so as to advance the cause of substantial justice, particularly where the absence of a litigant is neither wilful nor attributable to gross negligence. It has further been correctly noticed that the default in question was the first instance of non-appearance and there was no material on record suggestive of any habitual or deliberate negligence on the part of the respondent-plaintiff. The settled principle that a litigant ordinarily ought not to suffer for the inadvertence or lapse of counsel, especially where valuable rights are involved, has also been rightly applied by the learned trial Court.

6.1. As regards the objection concerning the authenticity of the power of attorney, the learned trial Court recorded a categorical statement made by the plaintiff affirming that the power of attorney bore her signatures, and, therefore, the said objection was rightly discarded. Similarly, insofar as the plea regarding absence of signatures or affidavit on the restoration application is concerned, the learned trial Court correctly held the same to be a curable procedural defect, which admittedly stood rectified subsequently. The restoration application having been duly signed by counsel for the respondent-plaintiff, no illegality can be said to have been committed in condoning such curable defects.

7. Furthermore, the restoration application was duly supported by the affidavit of Mr. Sandeep Singh, Advocate, who specifically deposed



that he had appeared before the Court on the relevant date and had inquired from the Reader regarding the proceedings of the case. It was further stated on oath that the main counsel for the respondent-defendant could not appear on account of illness and that the Clerk of Mr. Robin Mehta, learned counsel for the defendant, had also informed the Court that Mr. Robin Mehta was unwell and unable to appear. It was only at about 4:00 PM that counsel for the plaintiff came to know that the suit had already been dismissed in default owing to non-appearance of the parties.

7.1. Though the learned Civil Judge, while passing the impugned order, recorded that the application had been filed on account of illness of counsel for the plaintiff, the affidavit placed on record by Mr. Sandeep Singh, Advocate, clearly demonstrates that he had, in fact, appeared before the Court and had apprised himself of the proceedings, and that the absence was neither deliberate nor intentional. The material available on record, therefore, sufficiently establishes bona fide circumstances explaining the default in appearance.

7.2. In view of the aforesaid facts and circumstances, this Court finds no illegality, perversity, jurisdictional error, or material irregularity in the impugned order passed by the learned trial Court whereby the suit of the respondent-plaintiff, dismissed in default, was ordered to be restored to its original number and position. It is well settled that the provisions of Order IX Rule 9 CPC are required to be construed liberally so as to advance the cause of substantial justice, and litigants ought ordinarily to be afforded an effective opportunity to contest the matter on merits rather than being non-suited on technical or procedural grounds. Significantly,



the restoration application was instituted promptly and within a short span of time after dismissal of the suit in default, thereby ruling out any element of deliberate negligence or lack of bona fides on the part of the respondent-plaintiff.

7.3. Consequently, finding no merit in the present revision petition, the same is hereby **dismissed**.

8. It is, however, clarified that the observations recorded here-in-above are confined exclusively to the adjudication of the present revision petition and shall not be construed as an expression of opinion on the merits of the underlying dispute between the parties. The findings returned herein are limited solely to the controversy examined for the purposes of adjudication of the present petition. Nothing contained in this order shall prejudice, influence, or affect the rights, claims, or contentions of either party in any pending or future proceedings, nor shall the same be treated as a conclusive determination of any substantive issue of fact or law arising in the main suit.

9. In view of the fact that the principal matter stands finally adjudicated, all pending miscellaneous applications, if any, shall also stand disposed of accordingly. No separate or further orders are required to be passed in respect thereof.

14.05.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No