



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

**CR-4068-2023(O&M)
Date of decision: 19.08.2025**

Kulwinder Singh

... Petitioner

Versus

Satpal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Parvinder Singh, Advocate,
for the petitioner.

Mr. Sarju Puri, Advocate,
for the respondents.

VIKRAM AGGARWAL, J. (ORAL)

The present revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 25.07.2018 (Annexure P-14), passed by the Court of Additional Civil Judge (Sr. Divn.), Shaheed Bhagat Singh Nagar, vide which the application for restoration of the suit was dismissed. Challenge has also been made to the order dated 09.12.2022 (Annexure P-17), passed by the Court of Additional District Judge, Shaheed Bhagat Singh Nagar, whereby the appeal against the said order was also dismissed.

2. A suit for declaration (Annexure P-1) was instituted by the petitioner/plaintiffs, which was opposed by way of a written statement (Annexure P-2) filed by the defendants.



3. The case came to be dismissed in default under Order 9 Rule 8 of the Code of Civil Procedure, 1908 (for short, 'CPC') vide order dated 29.09.2017 (Annexure P-12).

4. An application under Order 9 Rule 4 CPC was filed for restoration of the suit, which was dismissed vide order dated 25.07.2018 (Annexure P-14). An appeal was preferred against the said order, which was also dismissed on 09.12.2022 (Annexure P-16), leading to the filing of the present revision petition.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner submits that both Courts gravely erred in dismissing the application for restoration as well as the appeal. He submits that it is well-settled that matters should be decided on merits and parties should not be non-suited on mere technicalities. It is contended that both Courts took a hyper-technical view and erroneously dismissed the application and the appeal. Learned counsel submits that even otherwise, the application for restoration had been filed within the period of limitation and, therefore, both Courts committed an error in dismissing the same.

7. Per contra, learned counsel for the respondents submits that there is no illegality in the impugned orders and that both Courts rightly rejected the application for restoration. It is submitted that the application for restoration (Annexure P-13) was completely vague and was, therefore, rightly rejected.

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



9. Concededly, the suit was dismissed under Order 9 Rule 8 CPC on 29.09.2017:

“Case called for number of times since morning. Neither plaintiff nor anyone on his behalf appeared. It is already 03:30 PM. Thus, present case is dismissed in default under Order 9 Rule 8 CPC. File be consigned to record room after due to compliance.”

10. An application for restoration (Annexure P-13) was thereafter moved. The trial Court held that the application had been filed on 30.10.2017, i.e., beyond the period of limitation of 30 days. It was also held that no sufficient cause had been shown for the plaintiff's non-appearance on the date fixed. It was further held that the application had not been filed under the proper provision and that no document had been submitted in support of the averments made therein. Notably, in the application, it had been averred that on 28.09.2017, relatives of the applicant were found missing and thereafter their dead bodies were recovered, as a result of which the plaintiff could not appear on 29.09.2017:

“6. I have heard both the counsels and gone through the case file carefully. Perusal of the file shows that the case titled as Kulwinder Singh Vs. Satpal Singh was dismissed under order 9 Rule 8 CPC on 29.09.2017. On the other hand as per averments made in the application plaintiff did not come present due to missing of one of relative of applicant namely Balwinder Singh plaintiff no.2 and due to this reason plaintiff and his witness could not appear before the



Court on 29.09.2017. Perusal of the file further shows that present application is filed on 30.10.2017. As per schedule of The Limitation Act, under clause 122, the period of limitation for filing application to restore a suit dismissed for default of appearance or for want of prosecution is 30 days from date of dismissal. Present application is filed beyond the period of 30 days. It was in the knowledge of the plaintiff that on 29.09.2017 the suit was pending for cross-examination and the application for restoration is filed beyond the period of limitation.

7. Moreover, applicant has moved the application under order 9 Rule 4 CPC. As per under order 9 Rule 4 CPC “where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for, or for his non appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.” As per under order 9 Rule 4 CPC application for restoratio of the suit, if suit is dismissed under order 9 Rule 2 or under order 9 Rule 3 can be filed. Hence, this application is also not filed under appropriate provisions of Civil Procedure Code.

8. Moreover, plaintiff has not placed on record any document regarding recovery of the dead body of his relative by police. The present application for restoration is filed beyond the period of limitation. Moreover, this application is not filed under appropriate provisions of Civil Procedure Code. As such, present application under order 9 Rule 4 CPC



to restore the case titled as Kulwinder Singh Vs. Satpal Singh filed by the applicant is dismissed. File be consigned to record room after due compliance.”

11. The first appellate Court also rejected the appeal on the same grounds. It was further held that an order passed under Order 9 Rule 4 CPC is not appealable and that the only appropriate remedy was to file a revision petition.

12. In the considered opinion of this Court, both Courts erred in dismissing the application for restoration. No doubt, the application was vague. However, a reason was given that the dead bodies of the applicant's relatives had been recovered, due to which he could not appear on the date fixed. The trial Court ought to have considered the matter from the right perspective and should have restored the suit. By now, the suit might as well have been decided. Both Courts should have considered the fact that matters should always, as far as possible, be decided on merits and petitions should not be rejected on mere technicalities. More so, when the conduct of the parties is not such which disentitle them to be heard on merits.

13. In view of the above, the impugned orders are found to be unsustainable. Accordingly, the revision petition is allowed, and the impugned orders are set aside. The application for restoration filed by the petitioner/plaintiff/applicant is allowed, and the suit is ordered to be restored to its original number.

14. Considering the fact that matter has already been delayed, the trial Court is requested to make earnest efforts to decide the matter expeditiously by fixing an appropriate time schedule for both sides.



15. Pending applications, if any, shall also stand disposed of.

(Vikram Aggarwal)
Judge

August 19, 2025

Rajan

Whether speaking / reasoned:

Yes/No

Whether Reportable:

Yes/No