IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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134 **CR-2968-2025**
Date of Decision.:19.05.2025

Subhash Chander @ Subhash Sachdeva **.....Petitioner**

Vs.

Beant Singh and Others **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Pankaj Maini, Advocate
for the petitioner.

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DEEPAK GUPTA, J. (ORAL)

Suit for possession by way of specific performance of an agreement to sell dated 30.06.2010 was filed by three plaintiffs, who included the present petitioner Subhash Chander, against Beant Singh and Others *(respondent herein)*, through a common counsel. Later on, plaintiff Nos.1 and 2 had withdrawn the suit. On 19.11.2013, nobody put in appearance on behalf of plaintiff No.3 i.e. petitioner herein, due to which the suit was dismissed in default under Order IX Rule 8 CPC vide order dated 19.11.2013 (Annexure P-3).

2. Application for restoration of the suit was moved by the said petitioner- plaintiff No.3 in April, 2015, along with an application under Section 5 of the Limitation Act to condone the delay. The application was opposed by the respondents. Necessary issues were framed. Evidence produced by the parties on the application was recorded and ultimately, the trial Court dismissed the application to condone the delay as well as the application for restoration of the suit vide order dated 29.11.2018 (Annexure P-9). Appeal filed against the said order has been dismissed by learned Additional District Judge, Moga vide his order dated 24.03.2025

(Annexure P-11).

3. The aforesaid orders have been assailed by the petitioner in the present revision petition. It is contended by learned counsel that initially the petitioner was shown as a proforma defendant. Later on, memo of parties was amended and he was impleaded as plaintiff No.3. The written statement had been filed by the defendants and the suit was being pursued by plaintiff Nos.1 and 2, who withdrew the suit. The petitioner could not come to know about the said fact and the suit was dismissed in default on 19.11.2013. He approached this Court by filing civil revision No.1709/2015 but the same was decided on 11.03.2015 by granting him liberty to exhaust remedy by filing the application under Order IX Rule 9 CPC before the trial Court and with that observation the petition was dismissed by this Court vide Annexure P-4. He then moved the necessary application under Order IX Rule 9 CPC along with application for condonation of the delay and the same has been dismissed by both the Courts below without considering the factual aspects of the fact that petitioner was never informed prior to dismissal of the suit in default. No notice was given to his counsel or to him before dismissing the suit and so, the impugned orders deserve to be set aside.

4. After hearing learned counsel for the petitioner at considerable length, this Court does not find any merit in the present revision.

5. It will be relevant to reproduce the observations made by the Appellate Court in its order dated 24.03.2025, while dismissing the appeal of the petitioner against the order dated 29.11.2018 of the trial Court, whereby his application under Order IX Rule 9 CPC was dismissed for restoration of the suit. These read as under:

> "16. The applicant (plaintiff No. 3) has prayed for restoration of the suit titled as Subhash Chander Vs. Beant Singh and others with the plea that he had no knowledge of the order dated 19.11.2013, of dismissal of the suit in

question in default and he came to know of the said order only on 12.02.2015 when he visited the office of his counsel.

17. Thus, clearly there is delay of more than 14 months in institution of the application for restoration of the suit in the matter in hand and both the issues i.e. No. 1 and 2, mentioned above, having been interlinked and interconnected with each other, have been rightly adjudicated upon jointly by the Trial Court in order to avoid the repetition of discussion.

18. Then, in support of his claim for restoration of the suit, the applicant (plaintiff No. 3) has not produced any cogent, convincing and reliable evidence on record. Except for the self-serving oral statement of the applicant (plaintiff No. 3), there is no other oral or documentary evidence, what so ever, on record to establish that the applicant (plaintiff No. 3) in fact intended to pursue the matter, but he was precluded from pursuing the suit by the act of his co-plaintiffs and he remained under the impression that the suit was being pursued by them.

19. Then, the Trial Court has rightly referred to the legal maxims i.e. vigilantibus non dormientibus jura subveniunt which means the law aids the vigilant and not the indolent and vigilantibus non dormientibus aequitas succurrit which means equity comes to the aid of those who are vigilant and not those who sleep on their rights.

20. It is not the case of the applicant (plaintiff No. 3) that he was precluded or prohibited because of any reasonable cause from visiting the court or even his counsel to ascertain the stage/ proceedings of the suit for such a long period of more than 14 months from the dismissal of the suit in default. There is also no evidence on record in this regard by the applicant (plaintiff No. 3) that there was any plausible reason precluding or prohibiting him from visiting the Court or even his counsel to ascertain stage/ proceedings of the suit. Rather, when subjected to cross-examination, applicant (Plaintiff No. 3) clearly states that his house is situated at a distance of only 2 kilometer form the court as well as from the house of Sh. Vinay Kashyap Advocate, whom he had consulted at the time of pendency of the civil suit. This proves fatal to the claim of the applicant (plaintiff No. 3) for restoration of the suit.

21. Then, this is also not the case of the applicant (plaintiff No. 3) that because of any medical illness or some other exigency, beyond his control, he could not pursue the suit properly. Rather, when subjected to cross-examination, applicant (plaintiff No. 3) clearly states that he remained in full mental senses and good physical health during the said period.

22. Then, it is also not the case of the applicant (plaintiff No. 3) that he was totally illiterate or uneducated to such an extent that he was unable to understand the consequences of his absence from the proceedings of the Court. Under such circumstances, by merely pleading that he was under the bona-fide belief that the suit was being pursued by his co-plaintiffs, applicant (plaintiff No. 3) cannot escape his responsibility of pursuing the suit to protect his own rights by himself regularly appearing in the Court. Then, in his cross-examination, applicant (plaintiff No. 3) also states that he used to talk with his counsel and counsel's clerks through mobile phone, which means that the applicant (plaintiff No. 3) was regularly in touch with his counsel and his assisting staff and it is not believable that despite being in touch with his counsel and his staff, applicant (plaintiff No. 3) did not come to know of the dismissal of the suit in default for such a long period of more than 14 months for moving the present application for restoration of the suit.

23. Then, simply because the applicant's co-plaintiffs were actively pursuing the suit and they withdrew their part of the suit without informing the applicant (plaintiff No. 3), it does not in any manner absolve the applicant (plaintiff No. 3) of his responsibility to follow up the proceedings till the logical conclusion. As rightly observed by the Trial Court, the applicant (plaintiff No. 3) was not at liberty to sleep over the entire matter as per his own whims and fancies without shouldering the responsibility of pursing his part of the case till the logical end. Thus, there being no convincing reason, what so ever, having been pleaded and proved on record by the applicant (plaintiff No. 3) to show that why he remained dormant and inactive from 19.11.2013 i.e. the date of dismissal of the suit in default till 12.02.2015 i.e. the date of institution of the application for restoration, without feeling the necessity to inquire about the actual status of the suit whether from his co-plaintiffs or his counsel, the assertion of the applicant (plaintiff No. 3) for restoration of the

suit has rightly been dismissed by the Trial Court.

24 Then, as per the plea of the applicant (plaintiff No. 3), he was not informed by the respondent No. 6 and 7 or his counsel about the proceedings of the suit and hence, his absence was unintentional and the suit was liable to be restored. But, when turned up into the witness box, applicant (plaintiff No. 3) clearly states that it was Baljinder Singh who disclosed the factum of the dismissal of the suit to him, thereby falsifying his own plea taken in the application for restoration. Thus, the version of the applicant (plaintiff No. 3) does not inspire any confidence and the applicant (plaintiff No. 3) cannot be held entitled to the relief of restoration of the suit.

25. Then, the Trial Court has rightly relied upon the authoritative judicial pronouncement in the case titled as Lachman Dass Vs. FCI cited as 2007(3) RCR (Civil) 340 that there is no provision in the Civil Procedure Code for giving a fresh notice to the party who is already represented by an advocate or pleader and merely by engaging a counsel, the litigant did not get an immunity from prosecuting his case by appearing in the Court because it is for the litigant to have looked after his interest in the case by personal appearance or by ensuring the appearance of his duly instructed counsel."

6. The aforesaid observations made by the Appellate Court, based upon the evidence on record would not only show the delay of more than 14 months in moving the application for restoration of the suit but further the fact that no cogent grounds were given by the petitioner for his absence before the trial Court. The Court rejected his application for the following key reasons:

I. Unexplained Delay: There was no convincing explanation for the long delay. The applicant failed to prove that any genuine obstacles prevented him from following up on the suit.

II. Lack of Evidence: The applicant relied solely on his own oral testimony without providing any credible documentary or corroborative evidence.

III. Proximity and Access: He lived just 2 km away from the court and his lawyer's residence, and admitted he was in good health and regularly in contact with his counsel via mobile. Hence, his claim of ignorance about the suit's status was unconvincing.

IV. No Valid Excuse: He wasn't ill, uneducated, or misled by anyone in a way that justified his inaction. His plea that co-plaintiffs were pursuing the case did not relieve him of personal responsibility.

V. Contradictory Statement: His claim that he wasn't informed was contradicted by his own admission in court that Baljinder Singh told him about the dismissal.

VI. Legal Principles: The Court cited maxims emphasizing that the law helps the vigilant, not the negligent, and referred to case law (Lachman Dass vs. FCI) which highlights a party's duty to remain actively involved in their case.

In conclusion, the Trial Court rightly dismissed the restoration application due to the applicant's negligence, lack of credible evidence, and failure to justify the prolonged inaction.

7. This Court does not find any illegality or perversity in the impugned order so as to justify any interference therein. As such, holding the present petition to be devoid of any merit, same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

May 19, 2025
Neetika Tuteja

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No