



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

CR-260-2025 (O&M)

Date of decision : 30.09.2025

KANTA THROUGH HER LRS

...Petitioner

Versus

PIAR SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gurpreet Singh Thind, Advocate and
Mr. Rajat Dogra, Advocate for the petitioner.

PANKAJ JAIN, J. (ORAL)

By way of present revision petition, challenge has been laid to the order dated 10.11.2014 passed by Additional District Judge, Ferozepur whereby appeal filed by the petitioner against the order dated 04.05.2012 passed by Additional Civil Judge (Senior Division), Zira, stands rejected.

2. Father of the petitioner namely Kapoor Singh filed a suit titled as 'Kapoor Singh vs. Piar Singh and others'. The same was dismissed in default on 13.02.1989. Kapoor Singh is stated to have died on 05.02.1989.

3. As per the petitioner, it is only on 18.12.2007 that she found certain papers pertaining to the suit. She immediately applied for certified copies. The same were supplied to her on 19.12.2007. Application was moved seeking restoration of the suit on 02.06.2008.

4. Trial Court framed the following issues on the application filed by the petitioner under Order IX Rule 4 CPC:



- “1. Whether the absence of the applicant from the court was neither intentionally nor willful, rather it was due to unavoidable circumstances? OPA
2. Whether there is sufficient ground to restore the suit titled as Kapoor Singh Vs. Piar Singh etc.? OPA.
3. Whether the application is not maintainable ? OPR.
4. Relief.”

5. The application was dismissed after the Trial Court returned findings on Issue No.1 against the petitioner, observing as under :

“11. Record of original file titled as Kapoor Singh Vs. Piar Singh etc bearing no. 4-7/4.9.1986 was summoned which shows that suit of the plaintiff was dismissed in default on 13.02.1989 as none appeared on behalf of the applicant. However, counsel for the respondents Sh. B.S. Dhanju was present on the said date. Thus, suit of the plaintiff Kapoor Singh stood dismissed in default under order 9 rule 8 CPC and not under order 9 rule 4 CPC. Counsel for the respondents has placed reliance upon case law AIR 2011 Himachal Pradesh 60, titled as K.D. Sharma & Ors Vs. H.P.State Cooperative Bank Ltd. & Anr, wherein it has been observed by the Hon'ble High Court that starting point of limitation in an application under order 9 rule 9(1) CPC is from the date of order and not the date of knowledge. Since the suit filed by Kapoor Singh is found to have been dismissed in default under order 9 rule & CPC. Provision of order 9 rule 9(1) CPC is applicable and not provision of order 9 rule 4 CPC in which present petition has been filed by the applicant. Accordingly present application for restoration of the suit tiled as Kapoor Singh Vs. Piar Singh bearing no. 4-7/4.9.1986 is held to be time barred. Moreover, in the cross examination version of applicant is contradictory to the version of petition. While filing present petition it is alleged that on 18.12.2007 some papers regarding main suit were found from the luggage of Kapoor Singh and on



19.12.2007 certified copies of plaint, written statement, dismissal order were supplied. However, in her cross examination applicant stated that documents were read over to them by one Priest and after 1.1/2 year they approached their counsel at Zira. It has come on record in her cross examination that their counsel read over documents to them and they returned and after three years they again approached their counsel and filed the present petition. She further stated that after 1.1/2 year of getting the certified copies, present petition was prepared. Hence, issue No.1 is decided against the applicant.”

6. The aforesaid findings stand affirmed by the Appellate Court.
7. Counsel for the petitioner has not been able to dispute that as per the testimony of the applicant/petitioner Kanta, she preferred the present application on 07.01.2008 despite being in the knowledge of the suit about three years prior to the same. As per provisions contained under Order IX Rule 4, application seeking restoration of suit is subject to law of limitation. As per Article 122 of the Limitation Act, 1963 the application was required to be filed within 30 days from the date of dismissal.
8. In the present case though original plaintiff died and could not appear but applicant/petitioner stepped into his shoes. She was required to file application within 30 days from the date she came to know of *lis* and its dismissal. As per her own testimony, application was filed after more than a year and half, she came to know of suit.
9. In view of above, finding no ground to interfere in the orders passed by the Courts below dismissing the application filed by the petitioner being hopelessly barred by time, the present revision petition is dismissed.



10. Pending application, if any, shall also stand disposed off.

September 30, 2025

**(Pankaj Jain)
Judge**

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No