

(2023-3)211 PLR 636
PUNJAB AND HARYANA HIGH COURT
Before: Justice Sanjay Vashisth.
SANDEEP BHANDARI – Petitioner
Versus
DR. MANMOHAN LAMA and others – Respondents.
CR-5827 of 2023

Civil Procedure Code, 1908 (V of 1908), Order 9 Rule 9 — Dismissed in default - Date of knowledge - Wrong noting of date - Limitation of 30 days for seeking restoration — Explanation that on 16.08.2022, plaintiff was informed next date of hearing as 01.11.2022, and therefore, only on 01.11.2022, he came to know of the actual date of hearing was 01.09.2022 — Plaintiff is owning the mistake committed by him cannot be denied with his/her rights, without its adjudication in accordance with law - Suit restored subject to cost. [Para 5, 6]

Mr. Yasheen Sethi, for the petitioner(s).

Sanjay Vashisth, J. (ORAL) - (03.10.23) – Challenge in the present Revision Petition filed under Article 227 of the Constitution of India, is to the order dated 01.09.2022 (P-2) passed in CS/1475/2019, whereby, the Court of learned Civil Judge (Jr. Divn.), Ludhiana, dismissed in-default the suit filed by the petitioner (plaintiff). Besides, a challenge has also been made to the order dated 31.08.2023 (P-4), passed in CM/1137/2022, vide which, application for restoration of the suit, filed by the petitioner was also dismissed, only on the issue of limitation, as the application was required to be filed within a period of 30 days.

2. Learned counsel for the petitioner submits that on 01.09.2022, when the suit was dismissed in-default, even the attendance of defendants is not marked present before the Court below. In the said suit, only the formal pleadings were completed and issues were yet to be framed. Thus, the suit was on its very early stage, and in allowing the application for restoration of the suit, by accepting the explanation given by the petitioner (plaintiff), rights of anybody would not get prejudiced or affected in any manner.

3. I have heard learned counsel for the petitioner and perused the relevant record.

4. For the relief, as claimed in the present petition, I do not deem it appropriate to call for the other side, because, same would cause unnecessary delay in the proceedings.

5. Undoubtedly, there is a statutory period of limitation of 30 days for seeking restoration and such period starts from the time of knowledge of the such order.

Counsel has given an explanation that on 16.08.2022, plaintiff (petitioner herein) was informed the next date of hearing as 01.11.2022, and therefore, only on 01.11.2022, he came to know of the actual date of hearing i.e. 01.09.2022. Thus, suit of the plaintiff was dismissed in-default only because of the misunderstanding and misconception of the plaintiff himself.

Broadly speaking, plaintiff (petitioner herein) is owning the mistake committed by him, therefore, the party, who is approaching the Court for the relief, cannot be denied with his/her rights, without its adjudication in accordance with law.

6. Considering the submissions and the explanation given, I deem it appropriate to set-aside the order dated 31.08.2023 (P-4), whereby, application for restoration of suit filed by the petitioner, was dismissed. Resultantly, the order dated 01.09.2022 (P-2), vide which suit of the plaintiff (petitioner herein), was dismissed in-default, is also set-aside.

Petitioner (plaintiff) is directed to appear before the Trial Court on or before 09.10.2023. On doing so, the Court below would proceed with the proceedings of the suit, in accordance with law. It is, however, made clear that the aforesaid relief would be subject to the making of payment of Rs.10,000/- as costs, which would be paid by the plaintiff (petitioner herein) to the defendants before the Court below.

SS - Petition stands disposed of accordingly.
Order accordingly.