
(2013) 08 P&H CK 0513
In the Punjab And Haryana At Chandigarh
Case No : CR No. 1201 of 2012 (O and M)

Bhira	Vs	APPELLANT
Sultan Singh and Another		RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(c)
Constitution of India, 1950 — Article 227

Citation : (2013) 08 P&H CK 0513

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Arvind Bansal, for the Appellant; K.S. Banyana, for the Respondent

Final Decision : Allowed

Judgement

Paramjeet Singh, J.—Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 08.09.2010 (Annexure P-1) passed by the learned Additional District Judge, Kaithal whereby appeal filed by the petitioner has been dismissed for want of prosecution as well for non-payment of costs and order dated 14.09.2011 (Annexure P-3) passed by the learned Additional District Judge, Kaithal whereby application for restoration of civil miscellaneous appeal has been dismissed. Shorn of unnecessary details, the facts relevant for disposal of present petition are that the petitioner filed a suit for permanent injunction against the respondents which was dismissed in default on 26.07.2007. The application for restoration was also dismissed and civil revision preferred before this Court was dismissed as withdrawn with liberty to avail remedy in accordance with law. The petitioner accordingly filed an appeal under Order 43 Rule 1(c) CPC along with application for condonation of delay of 344 days but since on two dates, the petitioner could not lead evidence in application for condonation of delay and did not pay costs of Rs. 200/-, therefore, the application along with appeal was dismissed vide impugned order dated 08.09.2010. The application for restoration of appeal has also been

dismissed vide impugned order dated 14.09.2011. Hence, this civil revision.

2. I have heard learned counsel for the parties and perused the record.

3. Learned counsel for the petitioner contends that clerk of counsel for the petitioner in the Appellate Court gave a wrong slip mentioning the next date of hearing as 08.10.2010 instead of 08.09.2010 as a result of which the petitioner could not appear and lead his evidence on 08.09.2010 and ultimately the learned Additional District Judge, Kaithal dismissed the appeal of the petitioner for want of prosecution as well as for non-payment of costs vide impugned order dated 08.09.2010. The petitioner thereafter moved application for restoration of appeal to its original number, but the same has also been dismissed by the learned Additional District Judge, Kaithal vide impugned order dated 14.09.2011. The learned counsel further contends that the petitioner should not be made to suffer for the fault of clerk of counsel, who noted a wrong date.

4. Per contra, the learned counsel for the respondents contends that the appeal was rightly dismissed as despite sufficient opportunities, the petitioner neither produced evidence nor paid the cost imposed by Court. For the reasons, the application for restoration has also been rightly dismissed. There is no illegality in the impugned orders.

5. I have considered the rival contentions of learned counsel for the parties.

6. Admittedly, in pursuance to the application for condonation of delay, issues were framed and petitioner was directed to lead evidence to prove his bona fide with regard to his absence from appearance. The Appellate Court ought not have dismissed the appeal and restoration application merely on technicalities. A party cannot be made to suffer for the fault of his counsel or clerk of counsel which has, in fact, resulted into unnecessary burden and harassment to him. Rules of procedure are handmaid to the administration of justice and are meant to meet the ends of justice and not to thwart or obstruct the same. In the present case, this Court is of the considered opinion that ends of justice would be met if one effective opportunity is given to the petitioner-appellant for leading evidence in the application for condonation of delay of appeal, subject to costs of Rs. 2500/- to be paid to respondents. For the reasons stated above, the impugned orders dated 08.09.2010 (Annexure P-1) and 14.09.2011 (Annexure P-3) are set aside. The miscellaneous appeal along with application for condonation of delay is restored to their original number. The revision petition is allowed in the aforementioned terms. The learned Appellate Court shall proceed further in accordance with law.