
(2013) 09 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : CR No. 6091 of 2012

Gurdeep Singh

APPELLANT

Vs

Municipal Council, Tehsil Nabha

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19
Constitution of India, 1950 — Article 227

Citation : (2014) 173 PLR 339

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Ravi K. Mattoo, for the Appellant; R.S. Cheema, 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 17.12.2011 (Annexure P-3) whereby appeal preferred by the petitioner has been dismissed in default and the order dated 27.07.2012 (Annexure P-5) passed by learned Additional District Judge, Patiala whereby application for restoration of appeal has also been dismissed. Shorn of unnecessary details, the facts giving rise to the present petition are to the effect that respondent-Municipal Council filed suit for recovery against the petitioner claiming the loss of Rs. 1,45,000/- on account of breach and non-performance of the contract. The said suit was decreed vide judgment and decree dated 13.10.2009. Feeling aggrieved by the said judgment and decree, the petitioner preferred appeal. On 17.02.2011, when the appeal was fixed for arguments, the petitioner failed to appear before the Appellate Court as learned counsel for the petitioner had mistakenly noted the date as 16.02.2011. Resultantly, appeal of the petitioner was dismissed in default. However, learned counsel for the petitioner informed him about the fate of the appeal belatedly. On 22.03.2011, when the petitioner came to know about dismissal of his appeal, he immediately filed application for restoration of appeal on 24.03.2011. However,

vide impugned order dated 27.07.2012, learned Additional District Judge, Patiala dismissed the application for restoration of the appeal. Hence, this revision petition.

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

3. Admittedly, the appeal was dismissed in default on 17.02.2011 and application for restoration of appeal under Order 41 Rule 19 CPC was filed on 24.03.2011. Earlier also, the appeal of the petitioner was dismissed in default vide order dated 05.04.2010, but was subsequently restored subject to costs of Rs. 1,000/- vide order dated 26.11.2010. The learned Appellate Court has dismissed the application primarily on the ground that the petitioner appears to be a chronic defaulter and no documents i.e. copy of case diary and brief of case have been brought on record to indicate that counsel for the petitioner had noted a wrong date. Be that as it may, the fact remains that so far as the case diary and brief of case are concerned, they are always with a counsel and he only conveys date of hearing to his party. For the fault of counsel or even other otherwise merely on technicalities, the substantive relief should not be declined specifically when the petitioner has taken measures for restoration of appeal and filed appropriate application by changing his counsel within a period of one month after obtaining certified copy of the order. In view of this, the instant petition is allowed, impugned order dated 27.07.2012 (Annexure P-5) and order dated 17.12.2011 (Annexure P-3) are set aside and appeal is restored to its original number, subject to costs of Rs. 5,000/- to be paid by the petitioner to the respondent.