

(2011) 11 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : C.R. 6787 of 2011

Makhan Singh

APPELLANT

Vs

Gurmit Kaur and another

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 105, Order 21 Rule 106, 151

Citation : (2011) 11 P&H CK 0093

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ritu Bahri, J.—Challenge is to the order dated 25.08.2011 (Annexure P-6) whereby learned Additional Civil Judge (Sr. Divn.), Hoshiarpur restored the execution, which was dismissed in default on 09.10.2010

2. Plaintiffs/respondents (herein after referred to as "the respondents") filed a suit for recovery of Rs. 5 lakhs as damages against the defendant/petitioner (herein after to be referred as "the petitioner"). The civil suit was decreed vide judgment and decree dated 22.09.2005 and had attained finality. The respondents filed execution application before the learned Executing Court and subsequently, objections were filed by the petitioner. During the pendency, the execution petition was dismissed vide order dated 08.08.2009 for non-compliance of orders of the Court. However, the learned Executing court restored the original execution to the same stage vide order dated 29.10.2009. On 09.10.2010, the execution petition was again dismissed in default. An application was moved by the respondents for restoration of the execution petition. The petitioner filed reply dated 03.03.2011 to the application and vide impugned order dated 25.08.2011, the learned Executing Court has again restored the execution application

3. At the very outset, learned counsel for the petitioner has argued that the

order dated 25.08.2011 is liable to be set aside on the ground that the execution petition is pending since year 2007 and the petitioner is suffering since last 4 years. The only motive of the respondents is to harass and humiliate the petitioner. He has further submitted that the application was dismissed twice and as per reasons given for restoration, no case for restoration is made out. He has placed reliance on the judgment on Hon''ble the Supreme court in a case of Damodaran Pillai annd others vs. South Indian Bank Ltd, VO. 142 (2006) PLR 30 to contend that under Order 21 Rule 105 & 106 when a petition is dismissed in default, the limitation to file restoration application starts from the date of order. The provisions of Limitation act are not applicable in a preceding arising under Order 21 when Act itself prescribes a period of limitation. He has further placed reliance on the judgment rendered in a case of Ritu Kuer vs. Alakhdeo Narain Singha, A.I.R 1918 Pat 67 to contend that u/s 151 of the CPC and Order 9 Rule 9, once the execution application is dismissed in default, it cannot be restored

4. The above said Supreme Court judgment is not applicable in the facts of the present case. The execution was dismissed on 09.10.2010, the application for restoration of the case was filed on 09.11.2010 i.e within the time of 30 days. Under order 21 Rule 106, there is no delay in moving the application for restoration

5. In view of the above, no ground is made out to interfere in the order dated 25.08.2011 (Annexure P-6) passed by learned Additional Civil Judge (Sr. Divn.), Hoshiarpur

6. Accordingly, civil revision is dismissed