
(2013) 07 P&H CK 0851
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 7489 of 2012

State Bank of India

APPELLANT

Vs

M/s. Matharoo Machine Tools and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2013) 172 PLR 352

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Rakesh Gupta, for the Appellant;

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Plaintiff State Bank of India has invoked the jurisdiction of this Court by way of this revision petition filed under Article 227 of the Constitution of India impugning order dated 7.5.2012 Annexure P/1 passed by the trial court thereby dismissing application Annexure P/6 filed by the petitioner. Suit filed by plaintiff-petitioner against respondents/defendants was decreed by the trial court vide judgment dated 15.6.1999 Annexure P/2 and preliminary decree Annexure P/3 for recovery of decretal amount by sale of mortgaged property was passed. Plaintiff moved application for passing of final decree. The said application was fixed for 18.7.2011 for summoning of respondents by publication in newspaper. However, on 18.7.2011 none appeared for the petitioner and therefore, final decree application was dismissed in default vide order Annexure P/5. Petitioner moved restoration application Annexure P/6 on 28.7.2011 alleging that the counsel could not appear on 18.7.2011 as the said date of hearing had been recorded on reverse side of the brief of the counsel. The said restoration application has been dismissed by the trial court vide order Annexure P/1 which is under challenge in this revision petition.

2. Notice issued to respondent No. 1 received back unserved due to incorrect address. Notice issued to respondent No. 2 received back unserved as he has left

the premises since 15 years. Notice issued to respondent No. 3 also received unserved having left the given address.

3. However, notice of the revision petition is not required to be issued to the respondents because they were not present when the impugned order Annexure P/1 was passed in the restoration application. Respondents had also not been served in the trial court in final decree application which is sought to be restored by the petitioner. Consequently, notice of revision petition is not required to be issued to the respondents.

4. I have heard counsel for the petitioner and perused the case file.

5. Counsel for the petitioner prayed for restoration of the final decree application on the averments made in the restoration application Annexure P/6. It was also submitted that even publication charges for service of notice on respondents by publication in newspaper had been deposited in the trial court.

6. I have carefully considered the matter. Restoration application Annexure P/6 was filed along with affidavit Annexure P/7 of the petitioner's counsel in the trial court. The restoration application was filed just 10 days after the dismissal of the final decree application in default. The respondents had not put in appearance in the final decree application. In these circumstances, instead of taking hyper-technical view, the trial court should have allowed the restoration application and should have restored the final decree application. Impugned order of the trial court is perverse and illegal and suffers from jurisdictional error. Resultantly, the instant revision petition is allowed. Impugned order Annexure P/1 passed by the trial court is set aside. Restoration application Annexure P/6 filed by the petitioner is allowed and final decree application filed by the petitioner is restored to the files of the trial court for proceeding in accordance with law.