

CNR No: HRPK02-001108-2022 CIS No: CM-121-2022
M/s G.S Promoters and Developers Vs. India Infroline Finance Limited etc.

Present: Sh. Parmod Bhardwaj, counsel for the applicant/deGREE holder.

Vide this order, this court proposes to dispose of an application under Order 21 Rule 105(1) read with Rule 104 of CPC for setting aside the Order dated 16.09.2022 and for restoration of the execution petition which was dismissed in default on 16.09.2022 moved by learned counsel for applicant/deGREE holder.

2. Brief facts as alleged by the plaintiff/applicant are that on 17.08.2022 the case was fixed for consideration on conditional warrants of the Judgment Debtor. On the said date, conditional warrants of JD were issued and case was adjourned for 16.09.2022. However, inadvertently the Clerk of the learned counsel for decree holder noted the wrong date i.e. 19.09.2022 instead of 16.09.2022 and on 16.09.2022 due to non-appearance of decree holder, the execution petition was dismissed in default. With these submissions, he prayed for allowing the present application.

3. This Court has heard the rival contentions of the learned counsel for the applicant/deGREE holder and have screened the record assiduously with his kind assistance.

4. By way of filing the present application, applicant/deGREE holder sought for restoration of the execution petition No.40 of 2019 which was dismissed in default on 16.09.2022 to its original number and stage.

5. At the very outset, it is pertinent to reproduce the law as envisaged under Order 21 Rule 106 (I) of CPC, 1908 is reproduced here:

106 Setting aside orders passed ex-parte etc-

“(i) The applicant, against whom an order is made under Sub-Rule (2) of Rule 105 or the opposite party against whom an order is passed ex-parte under sub-rule(3) of that Rule or under sub-rule (1) of Rule 23 may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order or such terms as to costs, or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application”.

6. A careful perusal of the application transpires that the present execution petition pertains to be of the year 2019 and same was dismissed in default vide order dated 16.09.2022. Now, the present restoration application has been filed before the Court on 15.10.2022 i.e. within 30 days. In accordance with Article 137 of Indian Limitation Act, 1936 the period for limitation in case of application under Order 21 Rule 106 is three years. Hence, the application has been moved well within time. Further, reference shall be made here into ***Vijay Kumar Vs. Kiran 2011 (2) TLR 745***, wherein the Hon’ble Punjab & Haryana High Court has averred that *“in case of dismissal of execution petition under Order 21 Rule 105, a specific provision has been incorporated under Code of Civil Procedure, 1908 i.e. order 21 Rule 106 which provides the legal mandate of restoration of the execution petition in case the petitioner is able to satisfy the Court that there was sufficient cause for his non-appearance on the date when the application was called on for hearing”.*

Further, in ***Madanlal Vs. Shyamlal, AIR 2002 SC 100; and***

Ram Nath Sao @ Ram Nath Sahu & Ors Vs. Gobardhan Sao & Ors., AIR 2002 SC 1201, wherein it was opined by Hon'ble Supreme Court that *"The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible"*. Moreover, reference shall also be made here to the observations made by the ***Hon'ble Supreme Court of India in Collector Land Acquisition Anantnag and another Vs. Mst. Katiji and others***, AIR 1987 SC 1353, wherein it has been aptly observed that substantial justice has to be preferred upon the procedural technicalities.

7. On the basis of legal and factual backdrop discussed above, it can be said that applicant/decreed holder's absence was not intentional and he filed the present application promptly as and when the dismissal for default order came into his knowledge.

8. Assailing the facts of present application, in view of legal and factual position elaborated above, this Court is of the considered view that allowing the present application shall serve the ends of justice and will avoid the multiplicity of proceedings and will further help in proper adjudication of the case. Therefore, the present application is liable to be allowed and is disposed of as allowed. **The restoration application is ordered to be restored at its original number, subject to cost of Rs.500/- which shall be deposited in District Legal Service Authority, Panchkula on or before the date Fixed.** However, this order of this Court shall have no effect on the

merits of the main case.

**Pronounced in open Court.
23.05.2024**

**(Arunima Chauhan)
Civil Judge(Junior Division)
Panchkula.UID No.HR0579**

All the pages of this order have been checked & signed by me.

**(Arunima Chauhan)
Civil Judge(Junior Division)
Panchkula.UID No.HR0579**

CNR No: HRPK02-001108-2022 CIS No: CM-121-2022

Present: Sh. Parmod Bhardwaj, counsel for the applicant/decreed holder.

Arguments heard on the afore-mentioned application. Vide separate order of even date, the afore-mentioned application is hereby allowed and accordingly disposed of. **Execution application be ordered to be restored at its original number.**

Let, conditional warrants of JD i.e. Branch Manager, India Infoline Finance Limited be issued for **28.08.2024**.

(Arunima Chauhan)
Civil Judge(Junior Division)
Panchkula.UID No.HR0579

Date of Order: 23.05.2024
sangeeta