

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No.244 of 2023****Decided on: 26.11.2025**

Prince Singh

... Petitioner

Versus

Mastan Singh & others

... Respondents

Coram***Hon'ble Mr. Justice Ajay Mohan Goel, Judge.*****Whether approved for reporting?¹Yes**

For the petitioner : Mr. Jagdish Thakur, Advocate.

For the respondents : M/s Ashok Kumar Thakur and Sanjay
Dutt Vasudeva, Advocates.**Ajay Mohan Goel, Judge** (Oral)

By way of this petition, the petitioner has, *inter alia*,
prayed for the following relief:-

"It is, therefore, prayed that petition may very kindly be allowed and the order dated 17.12.2022 passed by learned Additional District Judge-II, Kangra at Dharamshala, in Civil Misc. Appeal no. D/XIV/21/2018, titled as Prince Vs Mastan Singh and 4-others and order passed by learned Civil Judge, Sr.Division, Dehra, Kangra, in CMA No. 256/2015 in Civil Suit No. 106/2010, may kindly be quashed and set aside or the Hon'ble Court may please to pass any such or further order which the Hon'ble Court may deem just and proper on any terms and conditions in the interest of justice and fair play."

2. The petitioner is aggrieved by order dated 18.02.2016 (Annexure P-5) passed by the learned Trial Court, in terms whereof,

¹ Whether reporters of the local papers may be allowed to see the judgment?



an application filed by the petitioner to re-call order dated 21.09.2013, in terms whereof, the Civil Suit filed by him was dismissed in default, was dismissed and also judgment dated 17.12.2022 (Annexure P-6), passed by the learned Appellate Court, in terms whereof, the appeal filed by the petitioner against the dismissal of his application was also dismissed.

3. Brief facts necessary for the adjudication of this petition are that a Civil Suit filed by the petitioner was dismissed in default on 21.09.2013. For the restoration of the same, he filed an application on 03.11.2013. Admittedly, this application was filed beyond limitation and no application under Section 5 of the Limitation Act was filed alongwith the same for condonation of delay. The reasons given in the application was that the absence of the learned Counsel before the Court was bonafide as the date of listing of the case was erroneously recorded as 30.09.2013 instead of 21.09.2013 and when subsequently the party came to know about the dismissal of the case, immediately the application was filed for restoration of the order.

4. Learned Trial Court in terms of order dated 18.02.2016 dismissed the application by observing that there was no convincing reason furnished in the application for non appearance of the parties on 21.09.2013 and that the application was also not filed



within the period of limitation. Learned Trial Court also held that as the case was dismissed on 21.09.2013, the application ought to have been filed within 30 days as from the said date and as the application was filed beyond 30 days and there was no application for condonation of delay, therefore, the application was liable to be dismissed. Said order has been upheld by the learned Appellate Court.

5. Learned Counsel for the petitioner submitted that the order and the judgment passed by the learned Courts below are not sustainable in the eyes of law, for the reason that an extremely harsh and hyper-technical attitude has been adopted by the learned Courts below. He submitted that as the application seeking restoration of the order of dismissal in default was filed on 03.11.2013, i.e. within one and half months as from the date of dismissal of the case in default, a lenient view ought to have been adopted by the learned Court below. Learned Counsel further submitted that even if the application filed for restoration was not accompanied by an application under Section 5 of the Limitation Act, an opportunity should have been given to the party to file such an application because the endeavour of the Court always has to be to meet the ends of justice rather than throttle the rights of the parties by adopting a hyper-technical attitude. Accordingly, he



submitted that as the order passed by the learned Trial Court as well as the judgment passed by the learned Appellate Court were not sustainable in the eyes of law, the same be set aside and the petition be allowed, as prayed for.

6. On the other hand, learned Counsel for the respondents supported the orders passed by the learned Trial Court as well as the learned Appellate Court by submitting that the findings returned therein were clearly borne out from the record of the case. Learned Counsel further argued that it was an admitted case that the application filed for restoration was filed beyond limitation, yet it was not accompanied by any application under Section 5 of the Limitation Act seeking condonation of delay. Learned Counsel submitted that except the bald contention as mentioned in the application that a wrong date was noticed by the learned Counsel, nothing was placed on record to substantiate this fact. He submitted that in light of the fact that there is limitation prescribed for filing an application seeking setting aside of an order of dismissal in default and as the petitioner did not file the application within the said period, filing of an application under Section 5 of the Limitation Act was mandatory. Accordingly, he submitted that in this backdrop as the orders under challenge do not suffer from any infirmity, the present petition be dismissed.



7. I have heard learned Counsel for the parties and have also carefully gone through the order of the dismissal of the Civil Suit in default, the order of dismissal of the application for restoration of the Civil Suit as well as the judgment passed by the learned Appellate Court.

8. It is a matter of record that the Civil Suit filed by the petitioner was dismissed in default on 21.09.2013 on account of non appearance of the party/Counsel before the learned Court below. It is also a matter of record that the application seeking recall of this order was filed on 01.11.2013, i.e. within one month and a half, meaning thereby that the application seeking recall of the order was filed hardly ten to fifteen days beyond the period of limitation. Said delay, according to this Court was not all that much so as to inhibit a Court from exercising the powers conferred upon it to recall an order of dismissal passed by the learned Court below. If the application which was filed for recalling of the order of dismissal in default was not accompanied by an application under Section 5 of the Limitation Act, learned Trial Court should have given one opportunity to the party to file such an application. Had the party failed to avail this opportunity, then obviously consequences were to ensue. However, without granting the party an opportunity to file an application under Section 5 and then rejecting the prayer for recall



of the order on the ground of limitation which application was filed hardly ten to fifteen days beyond the period of limitation indeed was extremely harsh because what was dismissed in default was the main Civil Suit. Even the learned Appellate Court erred in not appreciating this extremely important aspect of the matter while deciding the application. Learned Appellate Court also adopted a hyper technical attitude in deciding the case rather than adopting an attitude which further the cause of action and is in the interest of justice. Learned Courts erred in not appreciating that as the Civil Suit was at the stage of arguments, no prejudice could have been caused to the other party had the application for recall of the order of dismissal in default been allowed.

9. This Court again reiterates that if the application filed by the petitioner seeking recall of the order of dismissal in default was not accompanied by an application under Section 5 of the Limitation Act, nothing prevented the Courts concerned from asking the party to do so. In the absence of any opportunity in this regard been given and in light of the fact that delay in filing the application was not all that grave so as to entail the consequences which have ensued in this case, the present petition is allowed. Order dated 18.02.2016 (Annexure P-5) passed by the learned Trial Court, as also judgment dated 17.12.2022 (Annexure P-6), passed by the



learned Appellate Court, are quashed and set aside. The application filed by the petitioner seeking recall of the order of dismissal in default is allowed. The Civil Suit is ordered to be restored to its original number. The parties through Counsel are directed to appear before the learned Trial Court on **15.12.2025**. Learned Trial Court is directed to proceed in the matter from the stage where it was, I.e. the stage of arguments. This is subject to payment of costs of Rs.15,000/- which shall be paid by the petitioner to the respondents on the next date. If the cost is not paid by the petitioner to the respondents, then this order will loose its efficacy.

10. The petition stands disposed of. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 26, 2025
(Rishi)