

In the High Court of Punjab and Haryana at Chandigarh

CR No.1486 of 2015

Date of decision: 02.03.2015

Smt Kanta

.....Petitioner

Versus

Dharam Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Ajay Jain,Advocate
for the petitioner.

--

SABINA, J

Petitioner has filed this petition challenging the order dated 31.1.2015 (Annexure P6), whereby, application moved by the petitioner for setting aside the ex-parte proceedings against her, was dismissed.

Learned counsel for the petitioner has submitted that the petitioner had never engaged a counsel to appear on her behalf as she had not received any summons. In fact, petitioner had immediately approached the trial Court for setting aside the ex-parte order dated 16.9.2011, on coming to know about passing of the said order. Learned counsel has placed reliance on Kuldip Kaur vs. Gurdeep Singh 1993(2) PLR 703 wherein it was held as under:-

“ After hearing learned Counsel for both the parties I am of the view that the order dated May 13, 1988, dismissing the application under Order 9 Rule 7 CPC cannot be sustained.

The question of limitation under Order 9 Rule 7 CPC is not res Integra. In *Trilok Singh v. Smt Ganga Devi and Anr.*, 1983(1) RLR 688 it was observed by a learned Single Judge of this Court that the period of 30 days under Articles 123 of the Limitation Act, 1963, applies only to an ex parte decree and not to ex parte proceeding. It was further observed that, in fact, there was no limitation provided for setting aside the ex parte proceedings, which depended upon the discretion of the Judge on the peculiar facts of each case. The above observation was reiterated and allowed in a later decision of this Court in *Siri Chand v. Ram Dhan and Anr.*, 1989 (1) RLR 481. In *Delhi Development Authority v. Shanti Devi and Anr.*, AIR 1982 Delhi 159 it was held that there was no rule that an application under Order 9 Rule 7 Civil Procedure Code is to be filed within 30 days from the date of the order proceedings ex parte. In *Palani Nathan v. Devanai Ammal* (1989) 2 Madras Law Journal 259, after referring to the case law, it was held that there is no limitation for filing a petition under Order 9 Rule 7 Civil Procedure Code. The finding of the learned Trial Court on issue No. 2 therefore, was set aside.

This brings me to a consideration of the next important question, namely whether the appellant had been able to assign good cause for her previous non-appearance. It is settled law that the power to set aside ex parte proceedings has to be liberally exercised in order to

advance the cause of justice. It may be pointed out that while the material words in Order 9 Rule 9 and Order 9 Rule 13 are "sufficient cause," the expression used in Order 9 Rule 7 is "good cause." The failure of the appellant in giving instructions to her Counsel was required to be viewed in the totality of facts and circumstances in which the appellant was placed, especially on account of the unfortunate occurrence involving her brother. This, in my view, has resulted in failure of justice and accordingly the order dated May 13, 1988, passed by the learned Additional Senior Subordinate Judge, Nawanshahr is set aside. As a result, the final order passed in the petition under Section 9 of the Act is also set aside. The case is remanded to the Additional Senior Subordinate Judge, Nawanshahr with the direction to re-admit the same against its original number and proceed according to law from the stage of the proceeding prior to August 4, 1987, when the appellant was proceeded ex parte. As this is a matrimonial matter and has been considerably delayed, it is further directed that the Trial Court shall decide the matter within six months from the date of receipt of records. The Trial Court record be sent there at once. The parties through their Counsel are directed to appear before the Additional Senior Subordinate Judge, Nawanshahr, on September 8, 1993."

In the present case, respondent has filed suit for specific performance of agreement to sell dated 27.11.2006 against the

petitioner. It has been noticed by the trial Court, while passing the impugned order dated 31.1.2015 (Annexure P6), that as per record, R.K.Verma, Advocate had appeared on behalf of the petitioner on 2.2.2010, after due service of the summons on the petitioner. Thereafter, the counsel filed his power of attorney on behalf of the petitioner on 26.2.2010. Counsel for the petitioner appeared before the trial Court till 16.8.2011. However, the counsel for the petitioner failed to appear on her behalf on 16.9.2011 and, consequently, petitioner was proceeded ex-parte. The plea taken by the petitioner that she had never engaged R.K.Verma, Advocate to appear on her behalf was rightly disbelieved by the trial Court as the petitioner had failed to take any action against the said counsel.

Thus, the judgment relied upon by the learned counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts. No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

March 02, 2014
arya