

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 1704 of 2015
Date of Decision: 09.3.2015.

Darshan Kaur

.....Petitioner

Versus

Sukhwinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

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

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 4.3.2015 whereby application moved by the petitioner under Order 9 Rule 7 of the Code of Civil Procedure, 1908 ('CPC' for short) for setting aside *ex parte* order dated 16.11.2009, was dismissed.

Learned counsel for the petitioner has submitted that petitioner was never served at the given address in the plaint as petitioner was residing in England. Petitioner had no knowledge about the pendency of the suit.

Respondent No. 1 has filed suit for declaration against the petitioner and others to the effect that he (respondent No. 1) and defendants Tirath Singh and Kulwinder Singh were owners in possession of the suit land. Vide order dated 16.11.2009, petitioner was proceeded *ex parte*. Petitioner moved an application on

26.2.2015 under Order 9 Rule 7 CPC for setting aside *ex parte* order dated 16.11.2009.

Order dated 16.11.2009 reads as under:-

“RC sent to defendants no. 2 to 8 on 24.8.09 not received back. Statutory period of 30 days expired. But neither defendants no. 2 to 8 nor any counsel came present. Hence defendants no. 2 to 8 are ordered to be proceeded against ex-parte.

Summons issued to defendant no. 1 received back with the report of Adampta. Ld. Counsel for the plaintiff is directed to file correct address along with RC within a week and then summons to defendant no.1 be issued for 23.1.2010. ”

Para 5 of the order dated 4.3.2015 reads as under:-

“Perusal of the file shows that present case was instituted on 9.4.2009 i.e. about six years ago. Vide order dated 16.11.2009 defendants no. 2 to 8 including present application were proceeded against exparte being not appeared in this case despite lapse of statutory period of 30 days after sending the process through registered post to them. Perusal of file further shows that defendant no. 1 Kulwant Singh, who is contesting the present suit is son of the present applicant. Kulwant Singh, defendant no. 1 along with applicant has also filed a caveat petition in the court of Learned Addl. Civil Judge, (Sr. Divn.), Nakodar and in the said caveat petition defendant no. 1 Kulwant Singh appeared at the behest of applicant as his duly

nominated power of attorney. Civil suit titled as Kulwant Singh and others vs. Balvir Kaur and others has been filed by applicant. In the said case also Kulwant Singh defendant has contested the suit as power attorney holder of the applicant. In the said plaint at para no. 5, it has been specifically averred that plaintiff in the present case who is arrayed as defendant in the said suit have filed false and frivolous suit against the plaintiff, which is pending in the court of Smt. Rajni Chhokra, Civil Judge (Junior Division), Nakodar and is fixed for 13.12.2010. Thus, it is very clear that applicant/defendant no. 6 was in the knowledge of pendency of the present suit but she abstained herself from appearing in this case. Further in cross examination of DW-1 Kulwant Singh, he has admitted this fact that he is power attorney holder of his mother (present applicant) and brothers but he has not engaged any Advocate on their behalf. He has further admitted that he has been discussing regarding the present case with his mother (present applicant) and brothers from time to time. Presentation of present applicant at the fag end of the case when rebuttal evidence has already been concluded and case is fixed for arguments, shows the deliberate intention of the applicant to delay the proceedings of the present case and to abuse the process of law.”

Thus a perusal of the impugned order dated 4.3.2015 reveals that son of the petitioner is contesting the suit in question.

Moreover, the son of the petitioner had been appearing as her attorney in other litigation. Further in his cross-examination, Kulwant Singh son of the petitioner, had admitted that he was attorney holder of the petitioner but had not engaged any counsel on her behalf. He also admitted that he had been discussing the present case with the petitioner and his brothers from time to time.

In these circumstances, the learned Trial Court rightly dismissed the application filed by the petitioner under Order 9 Rule 7 CPC as the same had been filed when the case was listed before the Trial Court for rebuttal evidence, if any, and arguments with a view to delay the proceedings in the case.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

March 09, 2015
Gurpreet