

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2120 of 2015 (O&M)
Date of Decision: 26.3.2015.

Balvir Kaur

.....Petitioner

Versus

Jagraj Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 21.2.2015.

I have heard the learned counsel for the petitioner and have gone through the record available on the file carefully.

Respondent had filed suit for specific performance of agreement to sell dated 15.3.2008. Petitioner failed to appear despite service and was proceeded *ex parte* vide order dated 17.7.2009. Suit filed by the respondent was decreed in *ex parte* vide judgment/decreed dated 6.3.2010 (Annexure P-1). Petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 ('CPC' for short) for setting aside the *ex parte* judgment/decreed dated 6.3.2010 passed against her. The said application was dismissed in default vide order dated 20.11.2013 (Annexure P-4). The said order reads as under:-

“Today case is fixed for evidence of the plaintiff. The

perusal of case file reveals that applicant/defendant availed several opportunities for adducing the evidence. However, he has not produced even a single evidence and since then file is kept pending for the same purpose on the repeated request of the applicant/defendant despite various opportunities including last opportunity alongwith burdened with cost. Today since morning none appeared on behalf of applicant/defendant. However, the learned counsel for the respondent/plaintiff is present. Case called several time since morning, but none has appeared on behalf of the applicant/defendant. It seems that the applicant/defendant is not interested to peruse the matter. It is already 3.55 P.M. So, the present case is ordered to be dismissed in default. File be consigned to the Record Room after due compilation.”

Thereafter, petitioner moved an application for restoration of the application under Order 9 Rule 13 CPC. The said application was dismissed vide the impugned order dated 21.2.2015 (Annexure P-16). The learned Trial Court rightly dismissed the application vide the impugned order as the petitioner had failed to justify her absence on 20.11.2013. A perusal of Annexure P-4 reveals that petitioner had failed to lead evidence in support of her application under Order 9 Rule 13 CPC despite last opportunity and imposition of costs. It appears that petitioner merely wanted to delay the proceedings. Since the petitioner had failed to show that her absence on 20.11.2013, was *bona fide* and unintentional, the learned Trial Court had rightly dismissed the application moved by the petitioner under Order 9 Rule 13 CPC.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

March 26, 2015
Gurpreet