

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No. 282 of 2015 (O & M)
Date of decision : 14.1.2015**

Raj Pal Singh

.....Petitioner

v.

Smt. Jasbir Kaur and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present : Mr. I. S. Ratta, Advocate, for the petitioner

Rakesh Kumar Jain, J.

This revision petition is against the order dated 9.10.2014 by which the learned trial Court has framed issues to decide the application under Order 9 Rule 13 CPC. The impugned order reads as under :-

“Today the case is fixed for remaining arguments on application under Order 9 Rule 13 CPC perusal of the file reveals that there are triable issues which are required to be framed before passing any order. However, on the other hand, learned counsel for respondent strictly opposed that there are no need to frame the issues in this application, as the applicant has received the ex parte decree by playing fraud. Learned counsel for respondent also submitted that the applicant has made undertaking before the court of learned Additional District Judge, Ludhiana that he will withdraw the suit from the lower court, but perusal of the order of learned Additional District Judge, Ludhiana attached with the file reveals that no such undertaking made by the parties regarding withdrawal of any such suit filed before lower court. As such, the court has sufficient grounds for framing the issues. From the pleadings of the parties following issues have been framed :

1. Whether the applicant has sufficient ground to set aside the ex parte judgment and decree? OPA
2. Whether the application is maintainable or not? OPR
3. Relief.

No other issues arise or have been claimed for. Now to come up on 29.11.2014 for the evidence of the applicant. PF/DM/List of witnesses be filed within a week. If the applicant fails to deposit the PF/DM/List of witnesses within the stipulated period then the production of the witnesses would be the sole responsibility of the applicant and he would in that case get no assistance from the Court.

Pronounced : 9.10.2014”

Learned counsel for the petitioner has argued that from the record it can be proved that compromise has been effected between the parties, therefore, the application could have been decided without framing of issues and therefore, the impugned order is erroneous and may be reversed.

After hearing learned counsel for the petitioner and perusing the record, I am of the considered opinion that there is no error in the order of the Court below because the question as to whether there was an undertaking before the Court below on the part of the respondent regarding withdrawal of the suit from the lower court, which is a fact which could be decided after framing of issues and granting an opportunity to lead evidence in this regard. Therefore, there is hardly any merit in the present revision petition which could warrant any interference by this Court.

Dismissed.

(Rakesh Kumar Jain)
Judge

14.1.2015
Ashwani