

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5551 of 2015
Date of decision : August 27, 2015

Manwinder Singh

..... Petitioner

Versus

Manjeet Kaur

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Varinder Singh Rana, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

Learned counsel for the petitioner-defendant submits that vide impugned order application seeking restoration of application filed under Order 9 Rule 13 CPC for setting aside of the ex-parte decree dated 25.3.2011 has been dismissed.

He submits that the application under Order 9 Rule 13 CPC was filed after acquiring knowledge of the ex-parte judgment and decree noticed above. Since the respondent-plaintiff contested the application, the trial court framed the issues and thus, was listed for evidence of the petitioner-defendant. However, inadvertently counsel for the petitioner-defendant noticed the next date of hearing

as 6.10.2014 whereas the case was listed on 6.9.2014 and since no one had represented the petitioner-defendant the application under Order 9 Rule 13 CPC was dismissed in default.

I have heard learned counsel for the petitioner and appraised the paper book.

The impugned order reflects that counsel for the petitioner-defendant had suffered a statement that he had informed the petitioner-defendant to contact him for the purpose of leading evidence in the application in February, 2014 but the petitioner-defendant did not bother to contact him.

Be that as it may, it is now a settled law that in case the counsel pleads no instructions the trial court is enjoined upon an obligation to issue notice. Such procedure has not been adopted by the trial court, therefore story coined in the application does not reflect correct statement of facts. Since the trial court did not issue notice to the petitioner-defendant, the application under Order 9 Rule 13 CPC ought not to have been dismissed for non-prosecution and on seeking restoration of the application, the court ought to have allowed the same on certain terms and conditions, much less imposition of costs.

In order to advance the ends of justice, I deem it appropriate to set aside the impugned order and the application under Order 9 Rule 13 CPC is restored back to its original number subject to payment of costs of ₹15,000/- in order to pay litigation expenses to the respondents. The costs shall be paid before the court below.

The revision petition is disposed of without issuing notice of motion as the interest of the respondents has been taken care of by payment of costs.

(AMIT RAWAL)
JUDGE

August 27 , 2015
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