

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 629 of 2015

Date of decision :February 25, 2015

Jagir Singh through his LRs

..... Petitioners

Versus

Surinder Kaur

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K. B. Raheja, Advocate
for the petitioners.

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).

This Civil Revision at the instance of the petitioner-plaintiff is directed against the Order dated 21.11.2014 whereby the application filed by the respondent-defendant under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 21.12.2009 has been allowed subject to payment of costs of ₹18,000/-.

Mr. K. B. Raheja, learned counsel appearing on behalf of the petitioner submits that the trial court while allowing the application under Order 9 Rule 13 has committed illegality. He further submits that the respondent-defendant had filed an appeal against the ex-parte judgment and decree dated 21.12.2009 and thereafter withdrew the said appeal vide order dated 17.2.2011

without liberty and thereafter filed an application under Order 9 Rule 13 along with an application seeking condonation of delay, therefore the application filed under Order 9 Rule 13 was not maintainable. He further submits that the application was misconceived as the respondent-defendant has intentionally delayed the matter as she was duly served before ex-parte decree of declaration was passed.

I have heard learned counsel for the petitioner-plaintiff and am of the view that the revision petition is liable to be dismissed for the following reasons.

The trial court on the basis of the reply submitted by the petitioner-plaintiff framed issue qua setting aside the ex-parte judgment and decree as well as condonation of delay. Both the parties to the *lis* lead evidence in support of their case and on the basis of findings the trial court observed that the respondent-defendant was not duly served and therefore she could not have been proceeded ex-parte. As regards the limitation period the trial court noticed that the appeal was withdrawn on 17.2.2011 and the limitation to file application expired on 16.3.2011 but the application was filed on 7.4.2011. There was delay of 21 days. The said delay had been sufficiently explained by the respondent-defendant by bringing on record the fact that she was a rustic lady and she could not arrange funds. This piece of evidence has gone unrebutted.

On the basis of preponderance of the evidence the trial court allowed the application under Order 9 Rule 13 and set aside the ex-parte judgment and decree. Thus, allowing the application under Order 9 Rule 13 is not erroneous and if allowed to

stand would not occasion a failure of justice. The petitioner had ample opportunity to cross examine the respondent-defendant on the merits of the case.

No fault can be found in the finding rendered by the trial court. I do not find any illegality or perversity in the aforementioned judgment and decree of the court below.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

February 25 , 2015
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