

CR No. 7495 of 2014 -:1:-

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

**CR No. 7495 of 2014(O&M)
Date of Decision: December 01, 2015**

Brig. Jasbir Singh (Retd.)

.... Petitioner

vs.

Amrita Singh alias Smt. Amrit Kaur & others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. A. K. Sinha, Advocate
for the petitioner.

Ms. Savita Saxena, Advocate Legal-Aid-Counsel
for respondent No.1 along with
respondent No.1. in person.

Ms. Neeru Bansal, Advocate for
Mr. Ashish Rawal, Advocate
for respondent No.7.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present revision is the order dated 01.03.2014 (Annexure P-1) passed by learned Civil Judge(Jr. Division), Chandigarh vide which suit filed by the present petitioner was dismissed in default for non-appearance of plaintiff-(petitioner herein) under Order 9 Rule 8 CPC. Also challenged is the order

dated 19.09.2014 (Annexure P-2) vide which the learned civil Judge (Jr. Divn), Chandigarh declined to recall the order dated 01.03.2014.

I have heard learned counsel for the parties and gone through the case file very carefully.

Undisputedly, the case is for partition and is pending since 2008 before the lower Court. On the date fixed none appeared on behalf of the plaintiff. The Court waited till 4 p.m. and thereafter dismissed the suit under Order 9 Rule 8 CPC. At that time the case was fixed for evidence of the defendants. Later on, an application was moved before the lower Court, explaining the reasons for non-appearance, stating that mother of the counsel for the plaintiff was admitted in hospital in ICU, therefore he could not appear.

This Court will not like to go into the merits of the said contentions. The case is for partition, the lower Court did not find any justification to adjourn the case as the case falls in the list of action plan of the year 2008. It appears that as case falls in the action plan of the year 2008, the Court was prompted to pass the order.

I am of the view that normally a case should be decided on merits and technicalities should not stand in the way.

Ms. Amrita Singh respondent present in the Court in person along with legal-aid-counsel stated that she is senior citizen and is facing difficulty before the lower Court. Her counsel is not supporting her in leading the evidence and she is under mental

stress and strains due to the pendency of the civil litigations and delay in disposal thereof. Her concern can be met by passing appropriate orders.

In view of the matter the impugned order dated 01.03.2014 (Annexure P-1) along with subsequent order dated 19.09.2014 (annexure P-2) are set aside and the case is restored at its original number. It is further directed that keeping in view the fact that the defendant is a senior citizen and is having difficulty with her counsel, therefore, the lower Court shall provide free legal-aid-counsel to the defendant by appointing senior counsel to defend her case. Further short adjournment shall be given and the trial shall be concluded within six months from the next date of hearing.

With the aforesaid directions the revision is allowed.

Both the parties are directed to appear before the lower Court on 17.12.2015 at 10 a.m.

December 01, 2015
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(KULDIP SINGH)
JUDGE