

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.7765 of 2013(O&M)
Date of decision: 20.1.2015

Varun Goyal

...Petitioner

Versus

Gurdarshan Singh Mann and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. D.P.Sharma, Advocate for the petitioner.

Mr. Sahil Khurashev, Advocate for respondent No.10.

G.S.Sandhawalia J.(Oral)

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India by the petitioner-plaintiff is to the order dated 19.11.2013 (Annexure P/7) whereby the Civil Judge (Junior Division), Chandigarh has declined to recall the order dated 13.12.2012 whereby the interpleader suit filed by the petitioner was dismissed in default.

2. The reasoning given by the trial Court is that the Court is not competent to sit in revision (sic review) in order which has been passed by the predecessor Court and the plaintiff and his counsel were to remain vigilant. It is further mentioned that provision under which the application had been filed has not been mentioned by the applicant.

3. A perusal of the paper book would go on to show that the eviction petition was filed by respondent no.10-M/s Allied Properties for directing the eviction of the present petitioner from the First Floor and toilet of SCO No.226, Sector 37-C, Chandigarh. The petitioner also filed a suit in the year 2008 since there was a dispute as to the ownership of the property in question. He also approached this Court by way of Civil Revision No.5651 of 2010 for clubbing the rent petition and the interpleader suit. This Court vide order dated 19.11.2010 (Annexure P/1) directed the District Judge, Chandigarh to assign the

interpleader suit and the eviction petition to one Court which would try both of them, separately but simultaneously. The tenant was directed to deposit rent in the Treasury which could be withdrawn by the Rent Controller so that interest of the ultimate beneficiary could be protected.

4. It is pointed out by the counsel for the petitioner that in pursuance of the direction of this Court, further direction was issued by the District and Sessions Judge, Chandigarh on 26.9.2011 to the assignee Court vide which order dated 3.10.2011 (Annexure P/3) directed that notice be issued to the parties as well as their counsel. However, as noticed, on 13.12.2012 (Annexure P/4), the suit was dismissed in default under Order 9 Rule 8 C.P.C. The petitioner filed an application dated 15.1.2013 (Annexure P/5) giving the reasons for non appearance as noticed above on account of directions passed by this Court in Civil Revision No.5651 of 2010 but the said application has been dismissed by the trial Court.

5. Counsel for the petitioner further points out that in the eviction petition also, tenant had been given one opportunity to cross-examine the alleged landlord by recalling him since on 27.4.2012 his cross examination was declared nil. The said order was passed on 30.7.2013 (Annexure P/8). It is thus submitted that in view of the provisions of Order 9 Rule 9 C.P.C. sufficient cause was shown for non appearance and the trial Court failed to exercise jurisdiction vested in it by law.

6. Counsel for the respondent no.10, on the other hand submits that the tenant is trying to delay the proceedings.

7. After hearing counsel for the parties, this Court is of the opinion that the impugned order dated 19.11.2013 (Annexure P/7) is not sustainable. Admittedly, the application was filed within 30 days and sufficient cause has been shown for non appearance i.e. on account of order passed by this Court, the suit was assigned to another Court and fresh notice was issued to the parties. In such circumstances, the suit was dismissed in default on account of

non appearance. The trial Court could always recall the order under the provision of Order 9 Rule 9 CPC which gave sufficient powers to the Court to recall its order whereby suit was dismissed in default. The petitioner will be seriously prejudiced in case the suit is not restored since the dispute is regarding the ownership of the premises in question. Nothing could be shown that the petitioner was aware of the proceedings on that date. Rather both the counsels were not present on the date the impugned order was passed.

8. Accordingly, impugned order dated 19.11.2013 (Annexure P/7) is held to be not sustainable and is set aside. The application for recalling the order dated 13.12.2012 is allowed and the order dated 13.12.2012 is also set aside. The trial Court shall proceed with the suit in accordance with law.

9. Accordingly, the present revision petition is allowed.

20.01.2015
Pka

(G.S.SANDHAWALIA)
JUDGE