

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6193 of 2014

Date of Decision: 08.04.2016

Jatinder Singh Bhatti

... Petitioner(s)

Versus

Smt. Nimrita Naresh Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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|----|---|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Sourabh Goel, Advocate
for the petitioner(s).

Mr. Vishal Aggawal, Advocate
for respondent No.1.

Shekher Dhawan, J.

Present petition is challenge to the order dated 3.9.2014 (Annexure P1), passed by learned Civil Judge (Senior Division), Ludhiana, whereby application under Order 9 Rule 4 CPC read with Section 151 CPC was accepted against order 21.10.1999 (Annexure P2) passed under order 9 Rule 2 CPC.

Facts relevant for the purpose of decision of the present petition that plaintiff (respondent No.1) had filed a suit for specific

performance of agreement of sale dated 6.5.1991 relating to suit property against the present petitioner along with Ramesh Kumar and Baldev Raj Bhatia. On 21.10.1999, the Court of Additional Civil Judge (Senior Division), Ludhiana passed the following order:-

"Notice to defendant No.1 not issued for want of PF/RC and copies. Same are not filed for the last four consecutive dates. There is no explanation on the file for non filing of PF/RC and copies. Therefore, suit against defendant No.1 is dismissed U/O 9 Rule 2 CPC.

Now to come up for filing written statement and reply to stay application by present defendants on 15.11.1999".

Thereafter, an application under order 9 Rule 4 CPC was filed by the plaintiff for restoration of the suit against defendant No.1 and the Court below accepted the application vide order dated 3.9.2014.

Learned counsel for the petitioner submitted that application under order 9 Rule 4 CPC was filed after 15 years because order was passed on 21.10.1999 and application under Order 9 Rule 4 CPC was filed on 23.8.2014 without any basis. Plaintiff was aware of the passing of the order right from the beginning and the said order was passed only because of non filing of process fee/RC by the plaintiff and after 15 years, there was no ground for acceptance of such an application having been filed by the plaintiff and the said order is liable to be set aside.

While arguing on this point, learned counsel for respondent

No.1 submitted that petitioner, who is defendant No.3 in the main case, has no locus standi to challenge the said order. Infact, the present petition has been filed just to delay the proceedings of the case. The Court below has rightly observed that technicality should not come in the way for advancement of justice and there is no ground to set aside the order dated 3.9.2014 and present petition be dismissed.

Having considered the submissions made by learned counsel for the parties and perusal of the record, this Court is of the considered view that the petitioner has not been able to establish any case that how he is aggrieved of passing of order dated 3.9.2014. Application under order 9 Rule 4 CPC was filed by the plaintiff on the ground that she was not aware of the fact of passing of the order of dismissal of suit qua defendant No.1 on account of non filing of process fee for summoning and even the delay caused was not intentional in any way. In the identical matter before the coordinate Bench of this Court in ***Karam Pal v. Ramesh Jain 2009(2) RCR (Civil) 613***, a liberal view was taken on the point of condonation of delay that even if there is some lapse on the part of petitioner or his counsel, party should not be made to suffer who is regularly appearing in the Court especially when other party can be compensated with the payment of costs.

As regard to limitation period and delay of almost 15 years in filing the application, Hon'ble the Apex Court in ***Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others 1987 AIR (SC) 1353*** and ***Firdous Omer (D) by LRs. and others v. Bankim Chandra Daw(D) by LRs. and Others 2006(4) RCR***

(Civil) 120, observed that in such like matters, application should not be dismissed on the ground of limitation and a lenient view is to be take while condoning the delay. The said view of the Hon'ble Apex Court has been followed by the Delhi High Court in **Lalit Kumar Bhargava v. Devender Kumar Bhargava 2000(3) RCR (Civil) 17**. The Court below has accepted the application under Order 9 Rule 4 CPC so as to give finality to the litigation because defendant No.1 may not move any application for *de novo* trial at a subsequent stage. The Court below has also rightly decided the application vide impugned order dated 3.9.2014.

In view of discussion made above, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

April 8, 2016

"DK"