

CR No. 7746 of 2015

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7746 of 2015
Date of decision : May 24, 2016

Kuldip Singh

..... Petitioner

Versus

Sant Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Parminder Singh-I, Advocate
for the petitioner.**

**Mr. Rakesh Gupta, Advocate
for the respondents.**

- 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).

The petitioner-plaintiff is aggrieved of the impugned orders dated 12.8.2015 passed by Civil Judge, Junior Division, Patiala (Annexure P-1) whereby application moved by the petitioner against the order dated 17.4.2013 vide which he was proceeded ex-parte in the application under Order 9 Rule 13 CPC moved by the respondents for setting aside of the judgment and decree dated 24.11.2001 was dismissed.

Mr. Parminder Singh-I, learned counsel appearing on behalf of the petitioner submits that application under Order 9 Rule 13 CPC was moved on 23.9.2006 after five years. However, in those proceedings petitioner-plaintiff has been proceeded ex-parte on 17.4.2013. An application was moved on 3.4.2014 but the same has been declined on the ground that no explanation, much less reasonable explanation has come

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forth in beseeching indulgence of the Court.

He further submits that the fault was of the previous counsel who did not inform. Due to non-appearance of the counsel party should not be made to suffer, thus urges this Court for setting aside the impugned order and allow the application dated 3.4.2014 as only three witnesses of the respondents-defendants have to be cross-examined.

Mr. Rakesh Gupta, learned counsel appearing on behalf of the respondents submits that the petitioner should have been vigilant. The order under challenge is legal and just. No reason has come forth in moving the application with promptitude, almost a year has lapsed when the petitioner had been proceeded ex-parte.

He further submits that in case the Court is inclined to grant relief, heavy costs should be imposed upon the petitioner.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the submissions of learned counsel for the petitioner.

It is a settled law that a party cannot be made to suffer for lapse of the counsel in view of the judgment rendered by Hon'ble Supreme Court in **Rafiz Vs.Munshi Lal and another AIR 1981 SC 1400.**

In view of the aforementioned, I am of the view that such an act tantamount to delaying the adjudication of the main controversy between the parties to the *lis* but I deem it appropriate to set aside the impugned order and allow the application dated 3.4.2014.

The trial court is directed to dispose of the suit aforementioned as expeditiously as possible preferably within a period of three months affording one opportunity to the petitioner to cross-examine

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the three witnesses of the respondents-defendants, thereafter two opportunities to lead evidence in defence subject to payment of costs of ₹5,000/-. The costs shall be paid to the learned Junior counsel to Mr. Rakesh Gupta, appearing on behalf of the respondents.

The civil revision is allowed.

(AMIT RAWAL)
JUDGE

May 24, 2016
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