

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.176 of 2015
Date of decision:17.5.2017**

B.P.Verma

...Petitioner

Versus

Pardeep Kumar Mohata and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sanjay Vij, Advocate for the petitioner.
Mr.Harkesh Manuja, Advocate for respondent No.1.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 3.9.2013 (Annexure P-1) passed by the learned trial court, whereby his application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure ('CPC' for short) was dismissed and also against the order dated 20.9.2014 (Annexure P-2) of the learned Additional District Judge dismissing his appeal, defendant No.2 has approached this Court by way of instant civil revision petition under Article 227 of the Constitution of India, for setting aside both the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

A combined reading of both the impugned orders and record of the case will make it crystal clear that petitioner has been very negligent in

conducting the case before the learned trial Court. Nobody put appearance on his behalf on 3.11.2009 when the case was listed before the learned trial Court. The excuse put forth on behalf of the petitioner, for non-appearance of his counsel on 3.11.2009 was not found to be justified. Even thereafter the case was adjourned more than once for the evidence of defendant No.1, i.e. HUDA, but nobody put appearance on behalf of defendant No.2-petitioner. Finally, the suit was decreed ex parte vide judgment and decree dated 11.12.2009.

Application under Order 9 Rule 13 read with Section 151 CPC came to be filed by petitioner-defendant No.2 on 10.3.2010, which was dismissed by the learned trial court, vide its order dated 3.9.2013 (Annexure P-1). Civil Miscellaneous appeal filed by the petitioner also came to be dismissed by the learned Additional District Judge, vide his impugned order dated 20.9.2014 (Annexure P-2). Hence this revision petition, at the hands of defendant No.2.

Petitioner has been found contradicting himself on more than one occasions. Affidavits (Annexures P-6 & P-7) have also not been found up to the mark. Both these affidavits are not going hand in hand. All possible lame excuses were put forth on behalf of the petitioner, which did not cut any ice with either of the learned courts below, while passing their respective impugned orders (Annexures P-1 and P-2). However, the fact remains whether the justice should be made to suffer for the reasons noticed hereinabove.

Admittedly, petitioner could not lead his evidence putting up its best case before the learned trial Court. He might be victim of the

circumstances and to some extent his own conduct as well. This Court would not like to comment upon the conduct of the learned counsel, who was representing the petitioner, before the learned courts below. However, keeping in view the totality of facts and circumstances of the case noticed hereinabove, proceeding on a holistic, pragmatic and constructive approach to avoid miscarriage of justice, this Court is of the considered view that petitioner deserves to be granted another opportunity to prove his pleaded case so as to ensure that finally justice must not suffer. It is equally pertinent to note here that in the circumstances of the case, plaintiff also deserves to be compensated by payment of reasonable costs, which in the instant case would be not less than Rs.50,000/- because of the above-said factual background of the case.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the learned courts below could not appreciate the above-said factual as well as legal aspect of the matter, while passing the impugned orders, the same cannot be sustained. Accordingly, the impugned order dated 3.9.2013 (Annexure P-1) and order dated 20.9.2014 (Annexure P-2) are hereby set aside.

Consequently, the application moved by the petitioner under Order 9 Rule 13 read with Section 151 CPC would stand allowed. The order dated 3.11.2009 whereby petitioner was proceeded against ex parte as well as the ex parte judgment and decree dated 11.12.2009 are also set aside, however, subject to payment of Rs.50,000/- as costs by the petitioner

to be paid to plaintiff-respondent No.1.

The learned trial court is directed to grant three effective opportunities to the petitioner to conclude his evidence. Thereafter, the learned trial court shall decide the suit at an early date. Petitioner shall pay the above-said costs of Rs.50,000/- to the plaintiff before the learned trial Court on the next date of hearing. Parties are directed to appear before the learned trial court on 5.7.2017.

Resultantly, with the above-said observations made and directions issued, the present civil revision petition stands allowed in the above-said terms.

17.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No