

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 2103 of 2017 (O&M)
DECIDED ON: March 23, 2017

MANJU BALA

....PETITIONER...

VERSUS

KESAR SINGH

....RESPONDENT...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. D. Hasija, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of instant civil revision petition preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of order dated 12.09.2016 passed by Civil Judge (Junior Division), Faridabad in civil suit bearing No. 644 of 2011, titled as “*Manju Bala vs. Kesar Singh and another*” vide which issues have been framed in an application under Order IX Rule 13 of the Code of Civil Procedure (for short, “CPC”) and the application has been listed for the evidence of the respondent-applicant.

2. Assailing the impugned order dated 12.09.2016 passed by Civil Judge Junior Division, Faridabad (Haryana), it has contended by learned counsel for the petitioner that the same is absolutely perverse, illegal, capricious, erroneous and is the result of non-application of judicious mind. The trial court has failed to appreciate that the notice of the suit was duly served upon the respondent and after receipt of the notice, he had appeared before the

trial court on 22.09.2011. Vide order of even date i.e. 22.09.2011, both the parties were directed to maintain status *quo qua* alienation and possession over the suit property. Not only this, the Court has also failed to appreciate that after appearance of the respondent before the trial court on 28.09.2011, he availed sufficient opportunities to file written statement but he failed to file the written statement within stipulated period of 90 days. Subsequently, he slipped away from the proceedings and proceeded against ex-parte vide order dated 11.02.2012. Thereafter, ld. trial court appreciating the evidence led by the petitioner and hearing the arguments of his counsel, pleased to pass the judgment and decree dated 19.02.2013 whereby the sale deed dated 04.07.2011 got executed by the respondent was declared null and void and further the respondent was restrained from dispossessing the petitioner from the suit property and from alienating the same in any manner. All these facts have been ignored and disbelieved by the ld. trial court while framing the issues and fixing the application under Order IX Rule 13 CPC for the evidence of the applicant-respondent. The application moved under Order IX Rule 13 CPC is nothing but a noble device adopted by the respondent-applicant to frustrate the well-reasoned judgment and decree dated 19.02.2013. In fact, there is no requirement of framing of issues as there is no triable question of fact and the matter in controversy is evident from the various interim orders passed by the ld. trial court while disposing the suit for declaration and permanent injunction preferred by the petitioner/plaintiff.

3. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but find the same to be without any legal and factual weight.

4. As observed by Hon'ble Apex Court in case captioned as ***“Ramrameshwari Devi v. Nirmala Devi”***, (2011) SCC 249, framing of issues is a very important stage in civil litigation and it is bounden duty of court that due care, caution, diligence and attention must be bestowed by Presiding Judge while framing issues. For considering a claim, issues are required to be framed or any point determined based on the pleas. Moreover, the object of framing issues is to focus upon questions on the evidence has to be led and to indicate the party on whom burden of proof lies. Though, the framing of issues is not necessary in summary proceedings, however, when it is said that issues are not necessary, it does not mean that evidence is not necessary. As observed by Hon'ble Supreme Court in case ***“Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd.”*** (2009) 17 SSC 796.

5. Adverting to the facts and circumstances of the case in hand, an application has been moved under Order IX Rule 13 CPC and for the disposal thereof, the applicant is required to be afforded an opportunity to lead evidence in support of various pleas taken by him. Such an application cannot be disposed of simply on the perusal of the trial court record, especially, when specific pleas have been taken by the applicant/respondent. It is to be seen as to what prevented applicant/respondent from his appearance in the Court after he has been duly served or his appearance in the Court. Thus, the framing of issues vide impugned order dated 12.09.2016 is neither having any illegality nor irregularity. Rather, the matter in controversy would be decided on merits and in such a situation, the trial court can be directed to dispose of the application within a specified time without any delay.

6. In the light of what has been discussed above, this Court does not

find any merit in the instant petition. As such, the same is dismissed whereby impugned order dated 12.09.2016 is upheld. However, the trial court is directed to dispose of application under Order IX Rule 13 CPC on priority basis preferably within a period of 6 months from the date of receipt of certified copy of this order.

7 No order as to costs.

March 23, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes/No