

Civil Revision No.5012 of 2016

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.101

**Civil Revision No.5012 of 2016
DECIDED ON: April 19, 2017**

KULWINDER KAUR

..PETITIONER

VERSUS

GULZAR SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. S.N. Sharma, Advocate for
Mr. Gourave Bhayya Gilhotra, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, the petitioner has sought the setting aside/quashing of order dated April 21, 2016 (Annexure P-3) passed by the learned Civil Judge (Jr. Divn.) Phagwara in civil suit titled as Kulwinder

Kaur vs. Gulzar Singh and others in CIS No.474 dated September 25, 2015 vide which an application for setting aside the ex parte judgment and decree dated January 29, 2016 has been allowed.

2. Undisputably, petitioner/plaintiff filed a civil suit for declaration to the effect that she along with defendants No.1, 2 and 4 to 9 are joint owners and in joint possession of the suit property according to their shares as well as for permanent injunction for restraining and prohibiting the defendants No.1 to 3 from selling, alienating, transferring or mortgaged the suit property. The said suit was decreed as ex parte vide judgment and decree dated January 29, 2016. However, subsequent thereto, the defendant/respondent preferred an application under Order IX Rule 13 CPC for setting aside the ex parte judgment and decree dated January 29, 2016, which was though resisted at the initial stage by filing reply. But subsequently, on the basis of the statement of the learned counsel for the petitioner/plaintiff, an application was allowed and the judgment & dated January 29, 2016 was set aside vide order dated April 21, 2016, which is under challenge through this instant petition.

3. The contention of the learned counsel for the petitioner/plaintiff while challenging the impugned order April 21, 2016 is that learned trial court while passing the impugned order has wrongly mentioned that the counsel for the petitioner/plaintiff has made the statement that she has no objection if the application for setting aside the ex parte judgment and decree dated January 29, 2016 is allowed. In fact, no such statement was ever suffered by the learned counsel for the petitioner/plaintiff. Moreover, there is no application moved by the respondent/defendant to set aside the

judgment and decree, application is only for setting aside the ex parte proceedings/order dated November 24, 2015. Therefore, learned trial court has made a grave error of fact while passing the impugned order by recording absolutely incorrect facts of “no objection by the learned counsel for the petitioner/plaintiff”. But this court does not find any legal and factual substance in the aforesaid submissions in view of the fact that an application for setting aside the ex parte proceedings dated November 24, 2015 onwards against the defendant/respondent No.1-Gulzar Singh was filed on January 29, 2016 i.e. the same day the ex parte judgment and decree was passed while disposing of the suit meaning thereby that an application was moved prior to the passing of the decree. Moreover, this application has not been resisted by the learned for the plaintiff Ms. Kumud Sharma, Advocate appearing on behalf of petitioner/plaintiff before the trial court made the following statement on April 21, 2016:-

“Present: Sh. V.K. Sharma, Adv. For applicant/defendant No.1.
Ms. Kumud Sharma, Adv. for plaintiff.

Original file be also summoned from record room. Ld. Counsel for plaintiff Ms. Kumud Sharma, Advocate suffered a statement that she has no objection if the application given to set aside the judgment and decree dated 29.01.2016 is allowed. In view of the statement of learned counsel for the plaintiff, the present application stands allowed. Civil suit is ordered to be restored at its original number. The present application be attached with the civil suit. Now to come up on 05.05.2016 for filing written statement by defendant No.1.

Dated 21.04.2016.

Sd/-
CJ(JD)/Phagwara”

4. On the basis of aforesaid statement, an application for setting aside the ex parte judgment dated January 29, 2016 was allowed. Thus, it cannot be said that the learned counsel for the petitioner/plaintiff did not suffer any statement before the trial court or that there was no application for setting aside the ex parte judgment and decree. Learned counsel for the petitioner/plaintiff was well aware about the passing of the decree as well as moving of an application even if there is no application for setting aside the ex parte judgment dated January 29, 2016. Yet, in view of the statement suffered by the learned counsel for the petitioner/plaintiff on behalf of petitioner/plaintiff, learned trial court has rightly set aside the judgment and decree dated January 29, 2016. There is no legal or factual flaw in the impugned order.

5. As a sequel to the aforesaid discussion, this court does not find any merit in the instant petition, the same is dismissed.

6. Leaving the parties to bear their own costs.

April 19, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No