

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

Civil Revision No.1535 of 2018 (O&M)

Date of decision: May 16, 2018

Sukhwinder Singh and others

...Petitioners

Versus

Hazara Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.P.S.Sandhu, Advocate
for the petitioners.

Mr.Ishan Singh Cooner, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners have filed this revision petition against respondent Hazara Singh and proforma respondents Harnam Singh, Mohinder Singh and Sher Singh under Article 227 of the Constitution of India for setting aside the order dated 22.02.2018 passed by learned Civil Judge (Junior Division), Amritsar, vide which the application filed by respondent No.1 for re-examining himself was allowed.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that in the present case ex-parte decree

was passed on 09.12.1975, as argued by learned counsel for the petitioner. In the year 2009, Hazara Singh filed an application for setting aside said ex-parte decree, which was dismissed in default vide order dated 26.05.2011. That application has been restored on 15.11.2013. Applicant Hazara Singh examined himself in the Court by way of filing affidavit and he deposed, as that application has not been restored. The applicant stated that allowing of restoration has come to his notice during course of arguments and as such, the evidence is to be led by the applicant on the application under Order 9 Rule 13 CPC as the Court has to decide the same. Reply to the application was filed by respondent (present petitioners). Thereafter, issues were framed and both the parties led their evidence.

Learned Civil Judge (Jr. Divn.), Amritsar, after going through the record, found that the application under Order 9 Rule 13 CPC had already been restored on 15.11.2013 and, rather issues were framed. The evidence, which the applicant had produced, it is qua restoration of the application only. Therefore, the Court below considering this fact, allowed the application by giving one opportunity to the applicant to tender his fresh affidavit on the application under Order 9 Rule 13 CPC vide order dated 22.02.2018.

The perusal of the impugned order dated 22.02.2018 shows that no illegality has been committed by learned Civil Judge (Jr. Divn.), Amritsar while accepting the application. It is settled law that rights of the parties should be determined on merit as far as possible and the Court should do substantial justice between the parties and should not go into the technicalities of law. The present respondent No.1-applicant, under the misrepresentation, filed the affidavit by considering that application under

Order 9 Rule 13 CPC has not been restored so far. The order dated 11.08.2016 passed by the Court below, shows that in the interim orders also, the case was fixed wrongly for consideration on restoration application.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while passing the impugned order. The impugned order dated 22.02.2018 passed by learned Civil Judge (Jr. Divn.), Amritsar, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

May 16, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No