

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1718 of 2017 (O&M)

Date of decision: 19.04.2018

Baldev Singh

...Petitioner

V/s.

Phool Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Satbir Gill, Advocate for the petitioner.

Mr. B.S. Mittal, Advocate for the respondent.

KULDIP SINGH, J. (Oral)

Heard.

Impugned in the present revision is the order dated 02.12.2016 (Annexure P-7) passed by learned Civil Judge (Junior Division), Sirsa vide which an application filed by respondent under Order IX Rule 13 CPC was dismissed.

I have heard learned counsel for the parties and perused the file carefully.

It comes out that in the execution proceedings, the decree holder made a statement on 15.03.2016 that he has no objection if the impugned judgment and decree is set aside subject to heavy costs. However, the matter was adjourned for 06.04.2016. Later on, the application under Order IX Rule 13 CPC was dismissed for want of prosecution on 02.12.2016. The impugned order was passed recording that evidence of the applicant not present rather an application had been moved by the applicant for setting aside the *ex parte* judgment and decree dated

01.08.2015. The Court was of the view that this has been done to set aside the adverse order passed against him which shows that he is not interested in pursuing his application. As such the application under Order IX Rule 13 CPC was dismissed. I am of the view that once the opposite party had raised no objection that the impugned *ex parte* judgment and decree be set aside subject to heavy costs, the Court should have passed the order then and there to set aside the *ex parte* judgment and decree but it adjourned the case and later on fixed the case for the evidence of the applicant on application under Order IX Rule 13 CPC. Even on 02.12.2016, the Court could have taken note of the statement made on 15.03.2016 to set aside the *ex parte* judgment and decree in terms of the said statement.

In these circumstances, the trial Court was not justified in dismissing the application under Order IX Rule 13 CPC. As such, the impugned order is set aside. The *ex parte* judgement and decree dated 01.08.2015 passed by learned Civil Judge (Junior Division), Sirsa is set aside subject to cost of Rs.20,000/- payable to the plaintiff as a condition precedent for further prosecution of the case by the defendant.

Civil revision is allowed.

Since the main petition has been allowed, the miscellaneous application pending, if any, stands disposed of.

(KULDIP SINGH)
JUDGE

19.04.2018

Divyanshi

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No