

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

**C.R.No.2975 of 2018**

Dharam Pal

....Petitioner

Versus

Om Parkash

....Respondent

**Date of Order: 29.5.2018**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Anmol Verma, Advocate for the petitioner.

Mr. Surinder Mohan Sharma, Advocate for the respondent.

**AMIT RAWAL, J (ORAL)**

This revision petition is directed against the orders dated 04.3.2016 whereby the application filed by the petitioner under Order IX Rule 13 CPC for setting aside the ex parte judgment and decree dated 23.11.2013 and order dated 23.10.2017 (P.2) dismissing the application seeking restoration of the order dated 04.3.2016.

Learned counsel for the petitioner submitted that the application seeking restoration of the order dated 04.3.2016 was submitted on 04.5.2016 two months after passing of the dismissal order in the application filed under Order IX Rule 13 CPC, for, the counsel did not appear in the application. The court below ought not have dismissed the application by applying the rigors of Limitation Act especially when the petitioner-defendant was not at fault. He thus prayed for setting aside of the impugned orders.

Per contra, learned counsel for the respondent submitted that the petitioner had not been diligent throughout while pursuing the matter

before the court below and thus no irregularity could be found with the impugned orders. He submitted that in pursuance of ex parte judgment and decree, possession of the suit land has also been taken away.

Be that as it may, I am of the view that the court below should have adopted principles of fair play and ought not have gone into technicalities while dismissing the application seeking restoration as the application under Order IX Rule 13 CPC was pending for evidence of the petitioner. In order to prevent miscarriage of justice, I deem it appropriate to set aside the impugned orders dismissing the application seeking restoration of the application under Order IX Rule 13 CPC as also the ex parte judgment and decree. Ordered accordingly.

Petition stands allowed subject to costs of Rs.5000/- to be paid to the respondent.

**May 29, 2018**  
**manoj**

**^(AMIT RAWAL)**  
**JUDGE**

Whether speaking/reasoned: Yes/No  
Whether Reportable : Yes/No