

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3549 of 2018(O&M)
Date of Decision: 27.09.2018

Sareen Electricals Pvt. Ltd.

.....Petitioner

Versus

M/s Goyal Mill Store

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kapil Aggarwal, Advocate
for the petitioner.

Mr. Gaurav Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 06.11.2015 passed by Additional Civil Judge (Senior Division), Barnala and order dated 09/12/04/2018 passed by Additional District Judge, Barnala, vide which application under Order 9 Rule 13 CPC was concurrently dismissed by both the Courts.

[2]. A suit for mandatory injunction was filed by the plaintiff/respondent on 03.04.2008. Defendant was served with the process of the Court. Defence of the defendant was struck off vide order dated 07.08.2009 for want of written statement. Thereafter, vide order dated 28.10.2009, defendant was proceeded against *ex parte*. However, the said order was set

aside vide order dated 05.03.2010. Defendant filed an application seeking to file written statement, but the prayer was declined by the trial Court vide order dated 07.09.2010. Defendant was again proceeded against *ex parte* vide order of even date i.e. 07.09.2010. Ultimately, *ex parte* Civil Court decree was passed on 27.07.2013.

[3]. An application under Order 9 Rule 13 CPC came to be filed only on 11.04.2014. Delay was sought to be explained by the defendant/petitioner by alleging that after 07.09.2010, there was a compromise between the parties. On the aforesaid aspect, no evidence was led by the defendant/petitioner in the proceedings under Order 9 Rule 13 CPC. No compromise was brought on record.

[4]. The only grievance of the petitioner is that at the fag end of the suit, relief of mandatory injunction was allowed to be changed to the relief of recovery by allowing the plaintiff to affix requisite Court fee and the same was done without notice to the defendant/petitioner.

[5]. It appears from the record that after passing the order dated 07.08.2009 striking off the defence of the defendant/petitioner, the petitioner was proceeded against *ex parte* on two occasions. The first omission was condoned by setting aside the *ex parte* order on 05.03.2010. However, on

second occasion, the petitioner was again proceeded against *ex parte* on the date on which the first prayer for filing the written statement was declined. Defendant/petitioner allowed the proceedings to go on against him, which ultimately entailed in passing of *ex parte* Civil Court decree dated 27.07.2013.

[6]. The relief which was subject matter of the suit for mandatory injunction is somewhat analogous to the relief of recovery. Permission granted to the plaintiff for changing the relief of mandatory injunction to that of relief of recovery cannot be said to be not enforceable, particularly in view of status of the defendant/petitioner to be that of *ex parte*.

[7]. The filing of application under Order 9 Rule 13 CPC was belated. No explanation has come forth whatsoever except to allege that there was a compromise between the parties and that too, could not be substantiated by producing any cogent evidence on record.

[8]. No exception can be made out to the impugned orders passed by the Courts below. This revision petition is accordingly dismissed.

September 27, 2018

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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No