

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

CR No.531 of 2018

Date of Order: 28.02.2018

Jit Singh

....Petitioner

Versus

Surjit Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Madan Lal Saini, Advocate for the petitioner.

Mr. Amit Kumar Saini, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Petitioner-defendant is in revision against the order dated 21.12.2011 (P.2) vide which his application filed under Order 9 Rule 13 CPC for setting aside ex parte judgment and decree dated 05.5.2008 has been dismissed in default as also order dated 15.12.2017 (P.4) passed by the trial Court whereby his application seeking restoration of the application filed under Order 9 Rule 13 CPC has been dismissed.

Respondent-plaintiff filed a suit for possession by way of specific performance of land measuring 4 kanal 0 marla having share out of 24 kanal 13 marla as per jamabandi for the year 1999-2000 on the basis of agreement to sell dated 03.6.2003. The Process server got prepared a false report qua refusal of service, which resulted into passing of ex parte order dated 13.6.2005 and thereafter decretal of the suit in favour of the respondent on 05.5.2008.

As soon as the said fact came to the knowledge of the petitioner, he filed an application on 13.3.2009 under Order 9 Rule 13 CPC for setting aside the ex parte judgment stating that no effective service had been effected upon the petitioner-defendant. Said application was

dismissed in default. The petitioner again moved an application for restoration of the application moved under Order 9 Rule 13 CPC on 19.4.2012 but the same has also been dismissed vide order dated 15.12.2017.

Learned counsel for the petitioner submitted that the trial Court has wrongly dismissed the application as the petitioner has already been able to bring forth sufficient evidence to prove the sufficient cause for non-appearance in the Court. Moreover, the fact of being absent as also the report produced by the process server are yet to be determined by way of evidence. He submitted that no prejudice and harm would be caused to the plaintiff in case the application is allowed.

On the other hand, learned counsel for the respondent has drawn the attention of this Court to order dated 25.1.2018 vide which notice of motion was issued subject to payment of costs of Rs.25,000/- to the respondent. He submitted that the petitioner was at fault and had intentionally and voluntarily not appeared on the date fixed despite being given numerous opportunities including the last one to conclude evidence. It is submitted that the conduct of the petitioner was just to cause delay and to harass the respondent.

I have heard learned counsel for the parties and appraised the paper book.

It is not in dispute that in the application moved by the petitioner under Order 9 Rule 13 CPC the petitioner had examined four witnesses but the same was dismissed in default vide order dated 21.12.2011 (P.2). Thereafter an application for restoration was filed on 19.4.2012, which was also contested by the respondent and the same has

been dismissed vide order dated 15.12.2017. A period of five years has already been passed from the date of filing of the application for restoration. The respondent-decree holder should not have contested the application and could have given statement for restoration of the same subject to any terms and conditions.

Resultantly, in order to prevent miscarriage of justice and to meet the ends of justice, I deem it appropriate to set aside orders dated 21.12.2011 (P.2) whereby application under Order 9 Rule 13 CPC has been dismissed in default and dated 15.12.2017 (P.4) vide which application seeking restoration of the application under Order 9 Rule 13 CPC has been dismissed.

Consequently, the petition is allowed and the application seeking restoration of the application filed under Order 9 Rule 13 CPC is allowed and application under Order 9 Rule 13 CPC is ordered to be restored by affording two effective opportunities to the petitioner to conclude the evidence within 45 days from today. Similarly, the respondent would also take three opportunities thereafter to conclude their evidence. The trial Court is also directed to conclude the evidence and decide the application under Order 9 Rule 13 CPC within four months. Costs of Rs.25,000/- as imposed by this Court, shall be released in favour of the respondent-Surjit Singh son of Kartar Singh.

Parties are directed to appear before the trial Court on 23.3.2018.

February 28, 2018
manoj

(AMIT RAWAL)
JUDGE

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