

(120)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-6972-2018

Date of Decision: 12.10.2018

SUSHILA DEVI

..... Petitioner

Versus

RANDHIR SINGH

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Mohit Nehra, Advocate
for Mr. Mukesh Yadav, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

1) This revisional application is directed against the order dated 06.10.2018 passed by the learned Additional District Judge, Narnaul in Civil Appeal No. 18 of 2018 vide which, the said appeal which had been preferred against the earlier order dated 18.07.2018 passed by the Civil Judge (Junior Division) Mahendergarh, had been upheld.

2) Background of the matter is that the petitioner was the defendant in the original Civil Suit No. 205 dated 25.08.2014 and had been obtaining time repeatedly for the purpose of filing her written statement. A last opportunity was granted to her subject to deposit of cost of ₹500/- for filing written statement on 09.04.2015 but the petitioner still did not file the

written statement. Ultimately her application for further time was rejected on 09.02.2017 as she had not even paid the cost till that date and the learned trial Court posted the matter for ex parte evidence. Ten months later the petitioner filed an application to set aside the said ex parte order which was dismissed by the trial Court as being time barred.

3) The petitioner thereafter, preferred her appeal which was dismissed vide the impugned order with the observation that the same was not maintainable, since the earlier order rejecting her application to set aside the ex parte order was not under Order IX Rule 13 of the Code of Civil Procedure (for short 'Code'), but actually under Order IX Rule 7 of the Code, since the prayer for setting aside the ex parte had been made during pendency of the suit, and not after its disposal.

4) For some incomprehensible reasons, the petitioner has not even annexed the copy of her application in the belated application filed before the trial Court in which she had prayed for setting aside the ex parte order passed against her, to show her bona fide at least to the extent that even till that time she had tendered her written statement or even shown any willingness to pay up the outstanding costs awarded against her.

5) The learned trial Court was therefore justified in dismissing her said application with the specific observation, *“The present application is filed only to delay the proceedings of the case and the same is time barred which is liable to be dismissed”*.

6) Undisputably the appeal preferred against the said order which was passed in relation to an application under Order IX Rule 7 of the Code was not maintainable, and the same was also dismissed rightly.

7) No grounds whatsoever are therefore made out to interfere with the impugned orders passed by both the Courts below.

Dismissed.

October 12, 2018
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(SUDIP AHLUWALIA)
JUDGE

- 1. Whether speaking/ reasoned : Yes/ No
- 2. Whether reportable : Yes/ No