

CR No.846 of 2018

{1}

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.846 of 2018

Date of decision:08.02.2018

Kashmir Kaur

... Petitioner

Vs.

Kabal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anupam Bhardwaj, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 21.11.2017 (Annexure P-3), whereby, the application moved by the respondent-defendants No.1 and 2 under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 11.07.2015, has been allowed.

Mr. Anupam Bhardwaj, learned counsel for the petitioner submitted that ex parte judgment and decree was passed on 11.07.2015, whereas the application was filed on 05.12.2015 being lacked by the reasons as to under what circumstances, the respondent-defendants acquired the knowledge of the ex parte judgment and decree being malafide but the

Court below without framing the issue allowed the application, much less, did not consider the provisions of Article 123 of Limitation Act, particularly when valuable right had accrued in favour of the petitioner.

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

The contents of the application for setting aside the ex parte judgment and decree dated 11.07.2015 was that counsel engaged by the applicant-defendant assured him regarding hearing of the matter but owing to the aforesaid fact, on the date of hearing, he was not present and the Court was required to issue notice to the defendant. It is settled law that where the counsel pleads no instructions, notice is required to be issued to the party but the Court below did not resort to the aforementioned procedure of law and proceeded further by passing an ex parte judgment and decree. No harm and prejudice would be caused as the application has been allowed subject to costs of ₹2,000/-.

At this stage, Mr. Bhardwaj, Advocate has expressed apprehension that since allowing of the application tantamounts to de-novo of the trial, the respondent-defendants may endeavour to delay the proceedings of the suit.

In my view, there is some force in the apprehension expressed by learned counsel for the petitioner, therefore, I intend to put a caveat/rider in the order under challenge by giving a direction to the trial Court for deciding the suit in a time bound manner.

While upholding the order under challenge, I dispose of the revision petition with a direction to the trial Court to decide the suit within a period of one year by affording 3-3 effective opportunities to both the parties, in accordance with law from the date of receipt of a certified copy of this order.

(AMIT RAWAL)
JUDGE

February 08, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No