

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

CR No.9018 of 2017 (O&M)

Date of decision:21.11.2018

Harbans Singh

... Petitioner

Vs.

Tarsem Singh (since deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Mohinder Kumar, Advocate
for the respondent.

AMIT RAWAL J.

The present revision is directed against the impugned orders dated 05.12.2015 (Annexure P-4) and 16.09.2017 (Annexure P-6), whereby, an application filed under Order 9 Rule 13 of Code of Civil Procedure and appeal for setting aside the order dated 05.12.2015, have been dismissed.

Mr. Amit Dhawan, learned counsel appearing on behalf of the petitioner submitted that the respondent-plaintiff instituted the suit for possession of the property in dispute by way of specific performance of the agreement to sell dated 09.01.2006 in respect of land measuring 44 kanals 12 marlas which resulted into ex parte judgment and decree dated 29.09.2010. The application for setting aside the ex parte judgment and

decree was submitted on 01.11.2012.

The suit was contested but erroneously noted the date of hearing as 16.10.2012 and when the counsel got prepared the affidavit came to know that the matter was adjourned for 31.10.2012. In fact, the suit was already decreed ex parte on 27.10.2012. There was no intentional delay but the trial Court erroneously dismissed the application which was filed after 04 (four) days of passing of the ex parte judgment and decree.

Mr. Mohinder Kumar, learned counsel for the respondent submitted that there was intentional delay on the part of defendant not to appear. The suit was filed on 08.08.2007 and the defendant neither appeared nor led any evidence, resulted into ex parte judgment and decree dated 27.10.2012. The valuable right has accrued in favour of the petitioner that cannot be taken away in the manner and mode and prayed for dismissal of the petition by supporting the orders under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that both the Courts below have not noticed the fact that within 04 (four) days of passing of the ex parte judgment and decree, the petitioner moved an application for setting aside. In such circumstances, by imposing certain conditions, the Court below could have fixed the time line for adjudication of the suit, i.e., cross examination of the plaintiff's witnesses and examination of defendant's witnesses but instead framed the issues and kept the application pending for almost 5 (five) years. The purpose was to give opportunity to both the parties. All these factors have not been taken care of, thus, the impugned orders are hereby set aside.

The application under Order 9 Rule 13 CPC is allowed. The ex parte judgment and decree is set aside. The suit is restored to its original number.

The present revision petition is allowed with a direction to the trial Court to give 4-4 effective opportunity to the respondent-plaintiff and petitioner-defendant to lead evidence. Since other party has unnecessarily been made to undergo rigmarole of pendency of application and the agony of delay, I deem it appropriate to impose the costs of ₹1,10,000/- which shall be a condition precedent. The trial Court shall make endeavour to decide the suit preferably within a period of 10 months from the date of receipt of certified copy of this order.

(AMIT RAWAL)
JUDGE

November 21, 2018
savita

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