

In the High Court of Punjab and Haryana at Chandigarh

CR-2199-2016 (O&M)

Date of Decision: March 07, 2019

Davinder Singh

... Petitioner

Versus

Balwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: None for the petitioner.

Mr. Yogesh Goel, Advocate and
Mr. B.D. Sharma, Advocate,
for respondent No.1.

Amit Rawal, J. (Oral)

Present revision petition is directed against the impugned orders dated 01.07.2014 (Annexure P/4) and 18.01.2016 (Annexure P/5) whereby application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 17.04.2009 has been dismissed and affirmed in civil misc. appeal.

Respondent no.1-plaintiff instituted the suit for injunction against the petitioner-defendant no.1 and respondents/defendants no.2 and 3 from forcible, illegal interference and dispossession by claiming the possession under the suit property. Petitioner-defendant no.1 along with defendant no.2-Rajwinder Singh filed a common written statement alleged that their possession was for the last 40 years. On the basis of the aforementioned pleadings, issues were framed. When the plaintiff tendered the evidence in support of pleadings, the defendants did not appear in the court

and were proceeded against ex parte vide order dated 25.02.2009, resulting into, *ex parte* judgment and decree on 17.04.2009. Petitioner-defendant no.1 with defendant no.2 instituted application under Order 9 Rule 13 CPC (Annexure P/2) on 04.09.2009 alleging that the counsel did not inform about non-appearance. Aforementioned application was contested and resultantly, dismissed as indicated above. As per the grounds of revision, it has been averred that counsel did not want to appear, should have made the statement so that Court would have issued the notice to the petitioner. No party should be made to suffer on the lapse of the counsel. Reliance was judgment of Supreme Court in ***Rafiz and another vs. Munshi Lal and another***, reported in ***AIR 1981 SC 1400***.

Mr. Yogesh Goel and Mr. B.D. Sharma, learned counsel, appearing on behalf of respondent no.1, submitted that defendant no.1 - petitioner had the knowledge of the suit and intentionally did not appear in the Court, particularly when filed the written statement. It is common practice amongst the litigants to put blame on the counsel.

I have heard learned counsel for respondent no.1 and perused the grounds of revision.

The application dated 04.09.2009 was filed less than 5 (five) months from the date of *ex parte* judgment and decree. No doubt, the petitioner-defendants contested the suit. Perusal of the judgment and decree reveals that counsel for the defendants did not appear and resulting into, *ex parte* proceedings against defendant vide order dated 25.02.2009. In my view, the trial court ought to have issued notice to the litigant to prevent initiation of process under the provisions of Order 9 Rule 13 CPC or a rigmarole. The aforesaid idea is to restrict the litigation to the shortest

possible time and decide the same on merits instead of laying focus on the misc. application. Equally so I cannot remain unmindful on the fact that the petitioner was not said due diligent and to some extent cavalier. In order to prevent miscarriage of justice, I deem it appropriate to grant opportunity to the petitioner to cross examine the witnesses and lead evidence in his support by restoring the suit, subject to payment of costs of Rs. 15,000/- which shall be condition precedent. Parties are directed to appear along with their counsel before the trial court on 02.04.2019. Registry is also directed to notify the decision of the revision petition to the petitioner at the given address as the revision petition has been decided in his absence.

The impugned order is set aside and the revision petition is allowed.

March 07, 2019
vkd

(Amit Rawal)
Judge

Whether reasoned / speaking : Yes

Whether reportable : No

