

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

CR no.4387 of 2014

Date of Decision: 05.04.2019

Parkash Kaur

...Petitioner

Vs.

Sardool Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Prateek Mahajan, Advocate, for the petitioner.

Mr. R.S. Sohi, Advocate for,
Mr. Amit Dhawan, Advocate, for respondent no.1.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the learned trial court (Additional Civil Judge, Sr. Divn.), Nakodar, by which her application under Order 9 Rule 7 of the CPC has been dismissed.

The background of the matter is that notice having been issued in the suit instituted by respondents no.1 to 7 herein, the petitioner (defendant no.1 in the suit) was eventually held to be served by way of substituted service of publication on 09.09.2013, after which she moved the aforesaid application for recalling of the order on 31.10.2013 (Annexure P-2 with the present petition).

The impugned order has been passed holding that contrary to what the petitioner contended in her application, as a matter of fact she was shown to be represented by Sh. A.K. Mittal, Advocate, even on 22.08.2013, after which none had appeared for her, and consequently, she having made a

false statement to the effect that she did not even know of the suit pending, she did not deserve any leniency.

Learned counsel for the petitioner submits that though the petitioner is a permanent resident of the United Kingdom, however, the address shown in the memo of parties before the trial court, is of Village Litran, Tehsil Nakodar, District Jalandhar.

Hence he submits that the trial court wholly erred in completely ignoring that fact.

He further submits that as a matter of fact Sh. A.K. Mittal, Advocate, had appeared for the petitioner on 22.08.2013, on which date the other defendants as had not appeared were proceeded against *ex parte*, with the case adjourned to 09.09.2013. He submits that simply because on that one date counsel for the petitioner did not appear, she should not have been proceeded against *ex parte*, on that very date.

Learned counsel for the respondents on the other hand reiterates what is stated in the impugned order, to the effect that the petitioner having duly been represented by a counsel even prior to the impugned order having been passed, obviously the stand by her before the trial court is wholly false.

Having considered the matter, though I completely agree with the counsel for the respondent as also with what is contained in the impugned order, that the petitioner falsely contended before that Court that she had no knowledge of the suit when even a counsel had represented her prior to 22.08.2013, (with the impugned order having been passed on

09.09.2013), yet, since on query, both learned counsel are *ad idem* that no proceedings have taken place in the suit thereafter, this petition having been filed in July 2014, with an interim order in favour of the petitioner having been passed on July 9, 2014, and with it specifically seen from the interim order passed by the trial court (produced in Court today by learned counsel for the petitioner), that the petitioners counsel did not appear only on 09.09.2013 and she was proceeded against *ex parte* on that very date, though he had appeared on the date immediately prior thereto, i.e. 28.02.2013, therefore this petition is allowed, subject to payment of costs of Rs.7,000/- by the petitioner to the respondents.

The petitioner would now file her written statement within a period of 1 month, even though she is stated to be still in the UK, after which the suit would proceed further from that stage.

05.04.2019
vcgarg/nitin

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : No