

256

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

**CR No.1199 of 2019 (O&M)
Date of Decision:-04.12.2019**

Satnam Singh

...Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Inderjit Sharma, Advocate
for the petitioner.

Ms. Akanksha, A.A.G. Haryana
for respondents No.1 to 3.

Mr. Amandeep Singh Manaise, Advocate
for respondent No.4.

None for respondents No.5 to 7.

RAJ MOHAN SINGH, J. (Oral)

Learned counsel for the petitioner by referring to order dated 05.12.2008 states that the suit was dismissed qua respondent No.4 under Order 9 Rule 2 CPC for want of process fee, copies, summons and RC cover. At the time of passing of impugned order on 09.08.2011 also, respondent No.4 was not present and the suit was dismissed in default under Order 9 Rule 8 CPC.

Learned counsel for the petitioners states that in view of dismissal of the suit of the plaintiff under Order 9 Rule 2 CPC qua respondent No.4, respondent No.4 is not a necessary party to be served here in the present revision petition.

In view of above, name of respondent No.4 is ordered to be deleted from the array of respondents. There is no representation on behalf of respondents No.5 to 7 despite service.

I have considered the submissions made by learned counsel for the parties i.e. petitioner and respondents No.1 to 3. Perusal of the record would show that on 09.08.2011, defendants No.5 to 8 were present in person besides Government Pleader for defendants No.1 to 3. None appeared on behalf of the plaintiff and the impugned order was passed.

Perusal of order dated 02.05.2011 would show that the case was adjourned for 12.05.2011 after examination of PW-1 Satnam Singh in chief and his cross-examination was deferred at the request of learned counsel for the defendants and the case was adjourned for 12.05.2011 for cross-examination of PW-1 and for remaining evidence of the plaintiff. On the adjourned date i.e. 12.05.2011, no evidence of the plaintiff was present and on the request of learned counsel for the plaintiff, the case was further adjourned to 08.06.2011 for cross-examination of PW-1 Satnam Singh and for remaining evidence of the plaintiff. On 08.06.2011,

the Presiding Officer had relinquished the charge and the case was further adjourned to 22.07.2011 for the same purpose. Ultimately, on 22.07.2011 also, the case was further adjourned to 09.08.2011 for the reasons recorded in the said order.

Apparently, at the time of passing of order dated 09.08.2011 i.e. at the time of dismissal of the suit under Order 9 Rule 8 CPC, neither learned counsel for the plaintiff was present nor of defendants No.5 to 8. Defendants No.1 to 3 were represented by Government Pleader and the case was fixed for cross-examination of PW-1 Satnam Singh. The application for restoration of the suit was dismissed primarily on the ground that the same was filed after a delay of 1 month and 15 days i.e. on 28.09.2011 particularly when the application was typed on 06.09.2011 i.e. within limitation. The impugned order in its very nature i.e. under Order 9 Rule 8 CPC bars institution of fresh suit.

Learned counsel for the petitioner submitted that the application could not be filed within limitation as the plaintiff could not come present because of his indifferent health and the Lower Appellate Court vide order dated 04.05.2015 also dismissed the appeal on the same ground. With the passing of impugned order under Order 9 Rule 8 CPC, the petitioner would be remediless as he cannot file fresh suit on the same cause of action. In the absence of learned counsel for defendants No.5 to 8, the cross examination of PW-1 Satnam Singh could not have been

conducted on 09.08.2011. The aforesaid facts would give rise to a consideration in favour of the petitioner, however, subject to payment of cost(s) of ₹20,000/- to be paid to defendants No.5 to 8.

In the facts and circumstances of the case, I am of the considered view that the petitioner cannot be left high and dry that too remediless. The payment of cost(s) shall serve the cause of justice. The payment of cost(s) shall be the condition precedent for granting indulgence by the Trial Court in the aforesaid context. It is made clear that the suit shall not proceed against defendant No.4 as the same had already been dismissed under Order 9 Rule 2 CPC and the said order has already attained finality.

For the reasons recorded herein above, this revision petition is allowed. Normal consequences to follow.

04.12.2019

geeta

**(Raj Mohan Singh)
Judge**

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No