

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 19 of 2009 (O&M)

Date of Decision: 29.04.2019

Kuldesh and another

...Appellants

VERSUS

Smt. Dani and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ajit Sihag, Advocate
for the appellants.

None for respondents.

SURINDER GUPTA, J. (Oral)

Heard.

The appellant filed suit claiming maintenance from respondent no. 1-Dani (mother-in-law of appellant) and respondents no. 2 to 4 (brothers-in-law). The suit was decreed *ex parte* by learned Additional Civil Judge, Rohtak with the observation that respondent no. 1-Dani is receiving pension of ₹5000/- per month and other respondents alongwith respondent no. 1 are enjoying agricultural land and having income from that land. After passing of judgment and decree dated 20.07.2017, an application was filed on 31.10.2007 for setting aside the *ex parte* decree, which was, however, dismissed on 11.03.2008. Thereafter, on 08.04.2008, defendants filed appeal before Ist Appellate Court, which was allowed and the case was remanded to learned trial Court to decide the same afresh after giving opportunities to both the parties to put forth their pleadings and lead evidence.

Learned counsel for the appellant has argued that respondents

were duly served in the main suit and their explanation regarding their non-appearance was rejected by learned trial Court while dismissing the application under Order IX Rule 13 CPC filed by them. Against that order they have not preferred any appeal or revision, as such, the same has attained finality and Ist Appellate Court could not set aside the *ex parte* judgment and decree.

Ist Appellate Court has taken note of the plea of respondents explaining the reason for their non-appearance in the civil suit and it was discussed in para 10 as follows:-

“10. On the other hand, learned counsel for the appellants/defendants has contended that appellants came to know about the present case on 15.05.2007 when appellant no. 1 went to Haryana Gramin Bank, Meham to withdraw some amount from her account and she was told about the seizure of the account as per interim order dated 20.07.2007 passed by learned Civil Court. The appellant no. 1 went to the court on 16.05.2007 and came to know that the next date for the case was 03.08.2007, which was execution proceedings and accordingly, the appellants put in appearance. The ex parte proceedings in the said execution proceeding were set aside against the appellants vide order dated 12.10.2007. However, appellants remained under the impression that proceedings in the main suit as well as in execution proceedings were going on simultaneously. The ex parte proceedings in execution only were set

aside vide order dated 12.10.2007, whereas ex parte proceedings in the main case were not set aside.

Further, it is contended that appellants applied for certified copies of the judgment and decree dated 31.10.2007 the appellants bona fide moved the application for setting aside the ex parte decree under Order IX Rule 13 CPC before the learned lower Court but unluckily the same has also been dismissed summarily without framing any issue or taking any evidence. Appeal was also filed against the said order.

Learned counsel for the appellants has further contended that the suit filed by the plaintiffs was not maintainable against the appellants/defendants. Appellant no. 1 is mother-in-law and appellants no. 2 to 4 are brothers-in-law/jeths of plaintiff no. 1. There is no legal liability fastened upon them to maintain plaintiff no. 1. Even otherwise, they have not inherited anything from Ram Dhari i.e. husband of the plaintiff no. 1. The suit has been instituted on the basis of wrong facts and learned trial Court has wrongly fastened the liability of maintenance upon them. Also, it is contended that suit was filed on 08.09.2006 whereas the plaintiffs have been made entitled for recovery w.e.f. 09.09.2003 i.e. even prior to the filing of the present suit.”

The plea that respondents remained under the impression that they have put in appearance in both the cases was held as justified while

accepting contention of respondents explaining their non-appearance in the main suit. The delay in filing the appeal was also condoned and it was deemed appropriate by the Ist Appellate Court to allow opportunity to respondents to contest the case.

It is a case in which appellant is claiming maintenance from respondents, who are her mother-in-law and brothers-in-law. Before creating any permanent right in their favour, learned trial Court is required to record a specific finding about liability of respondents to pay maintenance to appellants. Ist Appellate Court has rightly taken note of these facts and circumstances relating to non-appearance of respondents in the main suit. This fact is not denied that they have appeared in execution of interim order and were contesting the same. When they could appear in execution, there was no bar for them for not appearing in the main suit.

Keeping in view above facts, I am of the considered opinion that conclusions drawn by Ist Appellate Court are in accordance with facts and circumstances of the case and call for no interference in this appeal, which has no merit.

Dismissed.

Interim order passed in this appeal is withdrawn. Parties are directed to appear before Additional Civil Judge (Sr. Division), Rohtak on 30.05.2019, who will proceed further with the case and try to dispose of the same as expeditiously as possible.

April 29, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No