

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.9585 of 2018(O&M)
Date of Decision: 12.03.2019

Jasbir Kaur

.....Petitioner

Versus

Gurmit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Sirphikhi, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Defendant/petitioner has preferred this revision petition against the order dated 01.09.2016 passed by Civil Judge (Junior Division), Batala and order dated 11.07.2018 passed by Additional District Judge, Gurdaspur vide which application filed by the petitioner under Order 9 Rule 13 CPC was concurrently dismissed.

[2]. The application in question was dismissed along with application under Section 5 of the Limitation Act. Notice of motion was issued on 17.12.2018 for today. As per office report, respondent has been served through his son.

[3]. Learned counsel for the petitioner contended that

defendant/petitioner was regularly appearing in the trial Court and four of the plaintiff's witnesses were even cross-examined by her. Three of the PWs were cross-examined by the defendant/petitioner on 18.11.2014 and the case was adjourned on the request of the plaintiff at his own responsibility subject to last opportunity. Learned counsel further submitted that due to some mis-conception of fact, adjourned date could not be exactly noted by the petitioner and she was proceeded against *ex parte* on the next date of hearing i.e. on 20.12.2014. *Ex parte* judgment and decree was passed against the defendant/petitioner on 04.02.2015.

[4]. Petitioner filed an application under Order 9 Rule 13 CPC along with application under Section 5 of the Limitation Act on 16.03.2015. There was delay of 12 days in filing the appeal. and sufficiency of grounds was pleaded even in the application under Order 9 Rule 13 CPC.

[5]. It is a settled principle of law that in appropriate cases even the recital in the application under Order 9 Rule 13 CPC can be construed to be a sufficient ground for condonation of delay. In the instant case, the application under Order 9 Rule 13 CPC was duly accompanied by the application under Section 5 of the Limitation Act, therefore, this Court is of the opinion that one opportunity needs to be given to the petitioner to defend her

case. Delay of 12 days was not enough to dis-entitle the petitioner from contesting the suit on merits. Natural justice demands that the petitioner should be given more chance to defend her case on merits, however, subject to payment of costs of Rs.15,000/- to be paid to the plaintiff for the latch/omission, if any, in pursuing the litigation in a *bona fide* manner. Payment of costs shall be the condition precedent for granting indulgence by the trial Court who will fix a date for further proceedings of the case after due notice to the parties.

[6]. Disposed of.

12.03.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No