

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

**CR No.6286 of 2017 (O&M)
Date of Decision : 20.02.2020**

Mohinder Singh ...Petitioner

Versus

Jagjiwan Singh ...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gobind Rai Sharma, Advocate
for the petitioner.

Mr. Gaurav Chopra, Advocate
for the respondent.

ALKA SARIN, J (ORAL)

1. The present revision petition has been filed challenging the order dated 24.04.2017 whereby, the application filed by the defendant-petitioner under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (hereinafter to be referred as the 'CPC') for setting aside the judgment and decree dated 09.05.2013 was dismissed in default.

2. In brief, the facts relevant to the present case are that the plaintiff-respondent had filed a suit for recovery of Rs.5,95,000/- on 11.12.2008. The defendant-petitioner did not appear despite service and hence was proceeded against ex parte vide order dated 10.04.2009 and, thereafter, on 09.05.2013, an ex parte judgment and decree was passed in favour of the plaintiff-respondent. On 10.04.2014, an application was filed by the defendant-petitioner under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 09.05.2013. Due to the non-

appearance of the counsel for the defendant-petitioner, the said application filed under Order 9 Rule 13 CPC was also dismissed in default on 26.08.2014. After almost two years, an application for restoration of the application under Order 9 Rule 13 CPC was filed on 17.09.2016. The Trial Court, after hearing the parties, vide a detailed order dated 24.04.2017, dismissed the said application.

3. I have heard the learned counsel for the parties. It is been contended by the learned counsel for the defendant-petitioner that the absence was unintentional and that he be granted one last opportunity to pursue the application.

4. Per contra learned counsel for the plaintiff-respondent has vehemently argued that there is no ground for allowing the present revision petition inasmuch as the conduct of the defendant-petitioner has to be seen in this case which was not above board.

5. The suit for recovery in the present case was filed in the year 2008 and despite being proceeded against ex parte on 10.04.2009, no application was moved for setting aside the ex parte order dated 10.04.2009 and hence the ex parte judgment and decree dated 09.05.2013 was passed. Thereafter, only in the year 2014, an application was filed under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 09.05.2013. The said application under Order 9 Rule 13 CPC was also not pursued by the defendant-petitioner and the same came to be dismissed in default on 26.08.2014. Despite the application having been filed by the defendant-petitioner himself, the same was not pursued and it was only after a lapse of almost two years that an application for restoration of the application dismissed in default was filed.

6. There is absolutely no ground made out in the application or otherwise which is in any case hopelessly barred by limitation. Also the conduct of the defendant-petitioner will have to be seen in this case. The defendant-petitioner was proceeded against ex parte and an ex parte judgment and decree was passed against him. He did not pursue his application filed under Order 9 Rule 13 CPC, which was dismissed in default. After an inexplicable delay, he filed an application for restoration of his application. There is no cogent ground made out for setting aside the order dated 24.04.2017.

7. In view of the above mentioned facts, I do not find any ground to interfere in the present revision petition and hence, the same is dismissed.

(ALKA SARIN)
JUDGE

20.02.2020
Manpreet

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No