

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 2649 of 2020 (O&M)

Date of Decision: April 06, 2021

JASVEER KAUR
Versus

..... Petitioner(s)

GURPREET SINGH

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Manu Loona, Advocate
for the petitioner.

LISA GILL, J.(oral)

Petition is aggrieved of order dated 29.02.2020, passed by the learned Additional Civil Judge (Senior Division), Fazilka, whereby application under Order 9 Rule 13 read with Section 151 CPC filed by the respondent has been allowed and the ex-parte judgment and decree dated 09.12.2016, passed by the Additional Civil Judge (Senior Division), Fazilka has been set aside and the suit restored to its original number.

Present petitioner-plaintiff had filed a suit for recovery on 22.07.2016 against the respondent-defendant. Said suit was decreed ex-parte vide judgment and decree dated 09.12.2016. Application under Order 9 Rule 13 read with Section 151 CPC was moved by the respondent while pleading that the respondent was served summons in the said matter, issued for 19.10.2016 on 06.09.2016. In a complaint under Section 138 of the Negotiable Instruments Act filed by the petitioner's daughter Amardeep Kaur, notice was served upon him on 17.09.2016 for 01.10.2016. It is stated

therein that in order to resolve the controversy between Amardeep Kaur (petitioner's daughter) and the respondent, a Panchayat was convened in the month of September, 2016, wherein Amardeep Kaur disclosed that she had filled blanks of cheque amounting to Rs.3,30,000/- and besides this, she had also prepared one pronote for Rs.1,80,000/- in her own favour and one pronote for Rs.1,50,000/- in favour of her mother Jasveer Kaur. The matter was claimed to have been settled between the parties with the intervention of Panchayat, in which respondent agreed to pay a total sum of Rs.2 lakhs in two installments, one in the month of October, 2016 and second in the month of January, 2017. Petitioner's daughter Amardeep Kaur accordingly assured that after receipt of the first installment by her, she would withdraw the suit for recovery filed by her mother and complaint under Section 138 of the Negotiable Instruments Act would be withdrawn after receipt of second installment in January, 2017. Respondent claimed to have paid Rs.1 lakh in the presence of witness on 15.10.2016 i.e. before 19.10.2016, the date in the civil suit. After receiving the said amount, respondent was told that he need not appear in the said suit for recovery. Final installment was handed over by respondent on 12.01.2017 and complaint under the Negotiable Instruments Act was withdrawn by Amardeep Kaur. The other original pronote for the sum of Rs.1,80,000/- was returned and she also executed a statement in writing to this effect on 12.01.2017. In spite of receiving the entire settled amount, it is pleaded that Amardeep Kaur and her mother Jasveer Kaur got the suit decided ex-parte on 09.12.2016 much earlier to the writing dated 12.01.2017 in a dishonest manner and tried to overreach the

Court. It is thus stated that the respondent's absence was neither intentional nor willful but due to the reason as above and he came to know of the decree on 13.05.2019 when he obtained copy of the Jamabandi of his land. Said application was contested by the present petitioner while pleading that application after a lapse of two & a half (2½) years of passing judgment and decree dated 09.12.2016 was not maintainable. The respondent, it is stated was duly served but he intentionally did not appear and he only wished to prolong the proceedings. It is only when notice of the application under Order 21 Rule 66 CPC was served, that respondent filed the application.

Learned Additional Civil Judge (Senior Division), Fazilka vide impugned order dated 29.02.2020 allowed the application while observing that there was sufficient ground which prevented the respondent-defendant from appearing in the suit filed by the petitioner. Ex-parte judgment and decree was thus set aside and suit was restored to its original number. Aggrieved therefrom this revision petition has been filed by the petitioner.

Learned counsel for the petitioner vehemently argues that the impugned order dated 29.02.2020 has been wrongly passed, whereby application under Order 9 Rule 13 read with Section 151 CPC, for setting aside judgment dated 09.12.2016 has been allowed and execution petition filed by the petitioner has been wrongly dismissed by the learned Court vide order of even date. It is submitted that there are two different transactions entered into by the respondent, one with the present petitioner and one with the petitioner's daughter. The compromise relied upon by the respondent

only related to his liability towards the petitioner's daughter. Moreover, in case, the compromise was qua the present suit also, there was no difficulty in having mentioned the same in the compromise. There is not even a whisper about pendency of the civil suit in the compromise dated 12.01.2017 between the petitioner's daughter and the respondent. It is submitted that no compromise whatsoever was arrived at qua liability of the respondent towards the present petitioner. It has been wrongly observed by the learned Addl. Civil Judge, (Sr. Division), Fazilka in the impugned order dated 29.02.2020 that the matter was compromised by the respondent with the petitioner and that he was under the impression that suit would be withdrawn by her, therefore, he did not appear and was thus proceeded ex-parte. Acceptance of such a plea, it is submitted, has seriously prejudiced the petitioner in the civil suit, which has been restored. It is thus prayed that this petition be allowed.

I have heard learned counsel for the petitioner and have gone through the file with his assistance.

It is a matter of record that the petitioner had filed the suit for recovery of Rs.2,03,600/- against the respondent on 22.07.2016. Petitioner has pleaded that a sum of Rs.1,50,000/- was lent to the respondent-defendant on 27.08.2013 and a promissory note thereof was executed by the respondent on 27.08.2013. Said suit was decreed ex-parte on 09.12.2016. Amardeep Kaur, daughter of the petitioner admittedly filed a complaint under the Negotiable Instruments Act with the averments that respondent borrowed a sum of Rs.3,30,000/- in April 2016 and in order to discharge his

liability, he has issued a cheque dated 25.04.2016 for the said amount, which was returned. Learned counsel for the petitioner is unable to deny the time line of filing of the present suit by the petitioner as well as the complaint by the petitioner's daughter besides dates of the summons which were issued in the present suit as well as complaint. There is further no denial of the compromise, which was arrived at between the petitioner's daughter and the respondent, though it is vehemently argued that the compromise, was between the respondent and the petitioner's daughter, which is a total separate transaction and had nothing to do with the petitioner's suit. Learned Additional Civil Judge (Senior Division), Fazilka in this respect has rightly referred to the complaint under the Negotiable Instruments Act and observed that summon Ex.A-20 was issued to the respondent for 01.10.2016 and in the civil suit, summons were issued for his appearance on 19.10.2016. He had received the said summons on 06.09.2016. Rs.1 lakh is stated to have been paid by the respondent to petitioner's daughter on 15.10.2016. Amardeep Kaur, after receiving the final installment on 12.01.2017 has recorded her statement before the learned JMJC, Fazilka regarding settlement with the respondent and the complaint filed by her was withdrawn on 21.01.2017. Respondent had duly proved another pronote and receipt dated 06.06.2014 in favour of Amardeep Kaur, the original of which was produced before the said Court. The said pronote and receipt was stated to have been returned to the respondent at the time of compromise by Amardeep Kaur.

In my considered opinion, learned Additional Civil Judge (Sr. Division), Fazilka has correctly allowed the application under Order 9 Rule 13 CPC and set aside the ex-parte judgment dated 09.12.2016. Respondent has indeed successfully proved that he had sufficient reason for not appearing before the trial Court as has been averred. Apprehension raised by learned counsel for the petitioner that such a finding would prejudicially affect the petitioner at the time of trial of the suit is unfounded, as it is abundantly clear that learned trial Court shall proceed to decide the matter on the basis of evidence to be led before it by the respective parties. Whether or not the present transaction was a part of compromise arrived at between the petitioner and the respondent, is clearly the subject matter of trial and shall be decided accordingly by the learned trial Court on the basis of evidence, which would be produced before it.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 29.02.220, passed by the learned Additional Civil Judge (Senior Division), Fazilka.

No other argument has been addressed.

This petition is accordingly dismissed.

April 06, 2021

Sunil

**(Lisa Gill)
Judge**

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