

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

CR-2650-2021(O&M)

Date of decision:-09.11.2021

Krishna Devi deceased now through her LRs

...Petitioners

Versus

Smt.Sangeeta Verma and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Jaswal, Advocate
for the petitioners.

H.S. MADAAN, J.(ORAL)

Case taken up through video conferencing.

1. Under challenge in this revision petition is order dated 8.9.2021, copy Annexure P4 passed by the Court of Additional Civil Judge (Sr.Divn.), Ambala vide which he had set aside ex-parte judgment and decree dated 9.2.2012 directing *de novo* trial. It are the LRs of plaintiff, who are aggrieved by the said order and have approached this Court by way of filing the instant revision petition.

2. Briefly stated, facts of the case are that plaintiff –
Smt.Krishna Devi, widow of Sh.Brij Lal, resident of House No.623/6889,

Ward No.4, Kalal Majri, Ambala City, since dead, now represented by her LRs had filed a civil suit against defendant No.1 – Smt.Sangeeta Verma and UCO Bank, Ambala Cantt; on getting notice, defendant No.1 – Smt.Sangeeta Verma had put in appearance, engaging Sh.Anil Parkash Garg, Advocate; subsequently, on account of non-appearance of such defendant No.1, she was proceeded against ex-parte vide order dated 1.9.2011 and thereafter the suit was decreed ex-parte on 9.2.2012; subsequently defendant No.1 – Sangeeta Verma filed an application for setting aside of ex-parte judgment and decree contending that she is a household lady and her husband Sh.Pardeep Verma was pursuing the case; it was he, who had engaged Sh.Anil Parkash Garg, Advocate to represent her; she did not have any direct contact with the counsel; unfortunately her husband died on 19.8.2009 in prime of youth leaving her in a state of shock, therefore, she could not know about fate of the case; the counsel had also not informed her in that regard; as a matter of fact counsel representing her Sh.Anil Parkash Garg, Advocate had also expired on 28.3.2011; Sh.Amit Gupta, Advocate working with him as his junior counsel had joined another advocate and did not inform defendant No.1; the plaintiff by concealment of facts managed to get ex-parte judgment and decree in her favour about which defendant No.1 came to know on 27.9.2013, when plaintiff brought bricks and building material at the spot starting construction; the defendant No.1 asked her not to do so, then she showed copy of the decision of the Court to her and it was only then defendant No.1 came to become aware of ex-parte judgment decree passed against her; she applied for copy of judgment and decree and then moved

application for setting aside of the same. According to the applicant/defendant No.1, there was no case in favour of the plaintiff to claim preemption as the building happened to be composite one; the plaintiff had claimed total/major front of the building, resultantly the remaining portion lost its worth and utility and according to the applicant/defendant No.1, if the ex-parte judgment and decree are allowed to continue that would cause great prejudice to her.

3. Notice of the application was given to plaintiff, who appeared and contested the application taking several legal objections including maintainability of the application; the application being time barred; the applicant having concealed true and material facts from the Court, further contending that applicant is a property dealer and has been running a jewellery business also; she had deliberately absented from the Court as she was not interested in pursuing the suit knowing that she did not have any case on merits, therefore, no ground for setting aside of the ex-parte judgment and decree was made out.

4. For proper adjudication of the controversy, the Court of Additional Civil Judge (Sr.Divn.), Ambala framed issues, afforded opportunities to both the parties to lead evidence. After hearing arguments, the said Court vide impugned order accepted the application finding the explanation rendered by the applicant to be sufficient and plausible, further observing that valuable rights of the parties are at stake and to allow ex-parte judgment and decree to remain intact without giving any opportunity to defendant No.1 to contest it is likely to prejudice the cause of justice. To compensate the plaintiff for delay, cost of Rs.10,000/-

was ordered to be paid by applicant/defendant No.1 to LR's of deceased plaintiff/respondent.

5. I have heard learned counsel for the revisionist/plaintiff besides going through the record.

6. The trial Court after considering the version of both the parties and analyzing the evidence adduced by them in light of the judicial pronouncements on the subject has returned a categorical finding that applicant/defendant No.1 has been able to render a reasonable and plausible explanation for she being unable to pursue the proceedings in the civil suit properly after death of her husband and the advocate representing her. I do not see any reason to disagree with such finding. It is always desirable to decide a *lis* after hearing both the parties, rather than shutting doors of contest upon a party by adopting a very technical approach to the matter. When one party comes to the Court presenting his case, then for finding a clear picture with regard to the matter in question version of the other party should also be there before the Court. If a matter is decided considering case of one party only then that may result in miscarriage of justice, which is uncalled for. The Court after getting the versions of the contestants may proceed to decide a *lis* in accordance with law. The LR's of the plaintiff have been adequately compensated by awarding cost of Rs.10,000/-.

7. I find that the impugned order passed by the trial Court is detailed and well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

8. Thus, finding no merit in the civil revision petition, the same stands dismissed.

09.11.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No