

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5000 of 2017(O&M)

Date of decision:03.03.2022

Gurinder Singh

...Petitioner

Versus

Mandeep Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aayush Gupta, Advocate, for the petitioner.
Mr. Liaquat Ali, Advocate, for the respondent.

ANIL KSHETARPAL, J (Oral)

The petitioner herein is a defendant in a pending suit for grant of decree of mandatory injunction directing the defendant to hand over the possession of the suit property.

The petitioner was proceeded against ex-parte on 04.04.2016. The defendant filed an application for setting aside the ex-parte proceedings which was also dismissed for non-prosecution on 06.08.2016. The defendant filed an application for restoration of the application for setting aside the ex-prate proceeding which has been dismissed by the Court while observing that such application is not maintainable.

This Bench has heard the learned counsel for the parties at length and with their able assistance perused the paper book.

It is evident that the Civil Judge (Jr. Division), Ludhiana, has overlooked Section 141 of the Code of Civil Procedure, 1908, which reads as under:-

“141. Miscellaneous proceedings.—The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation.— In this section, the expression “proceedings” includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.”

It is evident from a careful reading of Section 141 CPC that the provision of the Code of Civil Procedure, 1908, shall be applicable, as far as it can be made applicable in all the proceeding in any court of civil jurisdiction. The proceedings for setting aside ex-parte orders is not alien to the civil proceedings. An explanation to Section 141 CPC includes proceedings under Order IX.

Keeping in the aforesaid facts, the Civil Judge (Jr. Division) Ludhiana, has erred in dismissing the application on the ground of maintainability.

Hence, the order in question is set aside. The matter is remitted back to the trial court for deciding the application for restoration of application for setting aside ex-parte proceedings afresh.

Parties through their counsels are directed to appear before the trial court, on 21.03.2022.

All the pending miscellaneous applications, if any, are also disposed of.

March 03, 2022
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(ANIL KSHETARPAL)
JUDGE

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