

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

121

CR-2267-2019

Date of decision: 20.09.2022

BALJINDER KAUR

..Petitioner

Versus

DALJIT SINGH AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.L. Verma, Advocate
for the petitioner.

Mr. Sham Lal Bhalla, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

The petitioner was proceeded against ex-parte in a suit wherein, ultimately, an ex-parte judgment was passed on 06.01.2016. The petitioner's application under Order IX Rule 13 to set aside ex-parte judgment and decree dated 06.01.2016 was dismissed by the trial Court on 16.12.2016. The petitioner initially, filed an first appeal before the Court of Additional District Judge. The First Appellate Court has failed to comprehend the difference between application for setting aside ex-parte proceedings under Order IX Rule 7 and an application under Order IX Rule 13 to set aside ex-parte judgment and decree. In para 8, the First Appellate Court observes that the trial Court has correctly dismissed the application for setting aside the ex-party decree, as infructuous. In para 9, the Court dismissed the appeal.

Admittedly, the petitioner did file an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, for setting aside the ex-parte decree. Hence, there was no application to set aside ex-party proceedings filed under Order IX Rule 7. In these circumstances, the First Appellate Court after examining the record was required to decide the appeal on merits.

However, as already noticed, the First Appellate Court failed to make a distinction. Consequently, the order dated 12.03.2019, is set aside.

Let the First Appellate Court re-decide the appeal after hearing the learned counsel representing the parties within a period of six months, from the date of receipt of certified copy of this order.

The parties through their counsel are directed to appear before the First Appellate Court on 18.10.2022.

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

September 20th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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