

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

289

CR-2603-2021

Decided on : 31.03.2022

Suman Devi

... Petitioner(s)

Versus

Beera Devi

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. J.P. Sharma, Advocate
for the petitioner(s).

Mr. Vikram Singh, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J. (Oral)

The instant revision petition has been filed under Article 227 of the Constitution of India, for setting aside the orders dated 02.05.2018 and 22.01.2019 (Annexures P-3 & P-6, respectively), whereby, the learned Civil Judge (Jr. Divn.), Mahendergarh, had dismissed the application for restoration dated 22.05.2018 (Annexure P-5), wherein, the prayer for restoration of the application under Order 9 Rule 13 CPC (Annexure P-2) was made.

Learned counsel for the petitioner *inter alia* contends that the respondent/plaintiff had filed a suit for declaration with consequential relief of permanent injunction (Case No. 44, D.O.I. 20.09.2017/24.05.2018, titled as, "Smt. Beera Devi Vs. Smt. Suman Devi"). The petitioner/defendant was proceeded against *ex-parte* vide order dated 25.07.2017, as a result of which, the suit was finally decided vide judgment & decree dated 23.08.2017. He submits that when the petitioner/defendant learnt about the institution of the aforementioned suit against her, she moved an application

under Order 9 rule 13 CPC (Annexure P-2), which was however dismissed in default vide order dated 02.05.2018 (Annexure P-3).

Learned counsel while drawing the attention of this Court to the ambiguities, which stand reflected in the orders, annexed as Annexures P-3, P-4 & P-5, respectively, submitted that the trial Court had wrongly marked the presence of the parties in the order dated 02.05.2018 (Annexure P-3), by inadvertently noticing therein that the 'suit of plaintiff is hereby dismissed in default', instead of recording that the 'application of the petitioner/defendant stood dismissed in default'.

Learned counsel further submitted that on account of the aforementioned error, it led to a lot of confusion with respect to the status and the rank of the parties as well as the subsequent proceedings in the case. However, soon thereafter an application was moved by the petitioner/defendant on 19.04.2019, seeking necessary corrections in the order dated 02.05.2018 (Annexure P-3), after obtaining No Objection Certificate from the counsel of the respondent/plaintiff, which was then allowed on 21.02.2021 (Annexure P-4). However, yet again certain clerical errors crept in the orders dated 21.09.2021 & 22.01.2019 (Annexures P-4 & P-6, respectively), . Learned counsel submits that during the interregnum, an application dated 22.05.2018 (Annexure P-5) was moved by the petitioner/defendant for restoration of the application under Order 9 Rule 13 CPC (Annexure P-2), which was dismissed in default vide order dated 02.05.2018 (Annexure P-3). Not only this, even the application for restoration was dismissed by the Court below vide impugned order dated 22.01.2019 (Annexure P-6).

Learned counsel further submits that the petitioner/defendant

was unable to appear on 02.05.2018 for genuine reasons, as one of her

family members was hospitalized coupled with the fact that even her counsel before the trial Court was unable to appear, as he was on his legs before another Court. Learned counsel submitted that it would result in grave miscarriage of justice, in case the application under Order 9 Rule 13 CPC, seeking restoration is not allowed and not decided on merits. It has been submitted that the petitioner/defendant is ready to bear costs, as may be imposed by this Court.

I have heard learned counsel for the parties and perused the relevant material on record.

The absence of the petitioner/defendant on the date when the hearing of her application under Order 9 Rule 13 CPC came up for hearing on 02.05.2018, appears to be genuine and for reasons beyond her control. Resultantly, in the facts and circumstances as enumerated hereinabove, the instant petition is allowed and the impugned order dated 22.01.2019 (Annexure P-6) is hereby set aside in the following terms:-

- (i) Application under Order 9 Rule 13 CPC (Annexure P-5) is ordered to be restored to its original number. The trial Court is directed to decide the said application expeditiously in accordance with law. It is made clear that no unnecessary adjournment shall be granted to either of the parties.
- (ii) The petitioner/defendant shall pay an amount of Rs.10,000/- as costs, to the respondent/plaintiff, which shall be a condition precedent.

(MANJARI NEHRU KAUL)
JUDGE

March 31, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No