

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

119

CR-4150-2022

Date of decision: 27.09.2022

Lakhwinder Singh @ Gogi (since deceased)
through his legal heir

.....Petitioner

Versus

Gagandeep Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sherry K. Singla, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner/LR is impugning the order dated 14.09.2022 (Annexure P-3) passed by the learned Trial Court vide which an application moved by her for setting aside the *ex-parte* proceedings against Lakhwinder Singh @ Gogi (defendant No.1) was dismissed.

Learned counsel *inter alia* submits that the impugned order suffers from patent illegality and is contrary to the principles of natural justice. He submits that it is a matter of record that after the death of defendant No.1, his mother was impleaded as his legal representative (for short, 'LR') vide order dated 12.07.2019, however, summons were never issued to effect service upon her. He further submits that since the petitioner/LR (mother of defendant No.1) was never served, she was unaware about the proceedings of the instant case, however, no sooner did she got to know about the same, an application for setting aside the *ex-parte* proceedings qua defendant No.1 was moved by her on 11.05.2022. Learned counsel has vehemently argued that grave prejudice would be caused, resulting in miscarriage of justice, if the impugned order is not set aside and the petitioner is not allowed to

contest the suit on merits.

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

A perusal of the impugned order reveals that after the service of summons, defendant No.1 put in an appearance before the Court on 09.02.2015, however, subsequently he was proceeded against *ex-parte* vide order dated 19.03.2015 and 14.05.2015. Defendant No.1 died almost four years later on 22.01.2019. During his lifetime, after he had been proceeded against *ex-parte* vide above two orders, no application was moved by defendant No.1 for setting them aside.

Still further, this Court does not find any force in the submissions made by the learned counsel that the petitioner/LR was not aware about the pendency of the suit in question. Admittedly, defendant No.2 is the daughter of the petitioner/LR and still further, it is a matter of record that her husband had stepped into the witness box as DW2 on 16.10.2019. Therefore, the Trial Court has rightly observed that it could not be believed that the petitioner/LR would not have been aware about the pendency of the instant suit against her son.

It is settled principles of law that LR merely steps into the shoes of the deceased litigant, therefore, just because the petitioner/LR was impleaded in the suit as LR of defendant No.1 cannot by itself be a ground to set aside the *ex-parte* order. Defendant No.1 during his lifetime never moved any application for setting aside the *ex-parte* order dated 19.03.2015 and 14.05.2015 despite having due knowledge about the pendency of the suit. Hence, at this stage, after a lapse of almost 07 years, the petitioner/LR cannot be allowed to reopen the trial.

This Court does not find any perversity much less illegality in the impugned order. Accordingly, the instant revision petition being devoid of any merit is dismissed in *limine*.

27.09.2022
Vinay

(MANJARI NEHRU KAUL)
JUDGE

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