

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

CR-5428-2022(O&M)

Date of decision:-23.11.2022

Pushpinder Singh

...Petitioner

Versus

Jyoti Rani and others

...Respondent

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

Present: Mr.N.P. Bhardwaj, Advocate
for the petitioner.

H.S. MADAAN, J.(ORAL)

1. Plaintiff Pushpinder Singh had filed a Civil Suit No.22 of 21.3.2015 for recovery against defendant Jyoti Rani – widow of Murari Lal and sons and daughter of Murari Lal, resident of Subhash Nagar, Gidderbaha, District Sri Muktsar Sahib. Notice of that suit was sent to the defendants, who did not put in appearance and were proceeded against ex-parte. After recording evidence, the suit was decreed ex-parte on 18.12.2015.

2. Subsequently, the defendants put in appearance and filed an application for setting aside of the ex-parte judgment and decree contending that they were never served in any manner in the said suit; they had neither received any summons nor any registered cover from the

Court and they had no knowledge regarding pendency of the suit; moreover, the respondent/plaintiff had not given correct address of the applicants/defendants because Subhash Nagar is a big locality having thousands' of houses and a number of streets; no house number or street number had been given by the plaintiff in the address of defendants; Priya Bansal defendant No.4 is married and is not residing at Gidderbaha; thereafter the respondent/plaintiff succeeded in getting the case decided ex-parte. On coming to know about the same, the applicants had approached the Court filing the application in question.

2. On notice, the respondent/plaintiff appeared and filed reply contesting the application contending that the applicants were very much aware of the pendency of the suit and did not put in appearance intentionally and were rightly proceeded against ex-parte. A prayer for the dismissal of the application was made. For proper adjudication, following issues were framed:

- 1. Whether reasonable cause has been shown for setting aside ex-parte judgment and decree or not? OPA.*
- 2. Whether the present application under Order 9 Rule 13 CPC has been filed within limitation? OPR.*
- 3. Relief.*

3. The parties led evidence. After hearing arguments, the trial Court decided issues No.1 and 2 against the applicants/defendants and in favour of respondent/plaintiff. Resultantly, the application was dismissed vide order dated 10.10.2019.

4. Feeling aggrieved by the said order, the applicants/defendants had approached the Court of District Judge by way of filing appeal, which was assigned to Additional District Judge, Sri Muktsar Sahib. After contest, the appeal was allowed vide order dated 8.9.2022 accepting the application and set aside the ex-parte judgment and decree.

5. Such order left the plaintiff/respondent aggrieved and he has approached this Court by way of filing the present revision petition.

6. I have heard learned counsel for the revisionist besides going through the record.

7. I find that the learned Additional District Judge, Sri Muktsar Sahib by proper appraisal and appreciation of evidence and correct interpretation of law had passed the judgment setting aside the order by Civil Judge(Jr.Divn.), Gidderbaha vide which application for setting aside of ex-parte judgment and decree had been dismissed.

8. It is to be taken note of that it is always desirable that a *lis* should be decided on merits rather than non-suiting a litigant on technical grounds. It is categorical stand of the applicants/defendants that they had not received any notice of the suit from the trial Court, as such there was no question of their putting in appearance in the Court. It was only later on when they came to know about the pendency of the execution then they approached the Court moving application for setting aside of ex-parte judgment and decree and they be allowed to contest the suit. The approach of the trial Court has been hyper technical not keeping in mind principles of natural justice, equity and fair play. The application called for being allowed and learned Additional District Judge, Sri Muktsar Sahib was

fully justified in upsetting the order passed by the trial Court rejecting the claim of the applicants/defendants. Learned Additional District Judge, Sri Muktsar Sahib had passed the order, which shows due application of mind. While remanding the case back to the trial Court, adequate directions had been issued to ensure that the suit in question is decided expeditiously. Therefore, I do not see any reason to interfere with the order under revision petition.

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

23.11.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No