

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1046-2016 (O&M)
Date of decision: 01.05.2023

BAHADUR SINGH

...Petitioner

VS

PREM CHAND AND ORS

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate,
For the petitioner.

Mr. Parminder Singh, Advocate,
For respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 13.08.2012 (Annexure P-3) whereby application under Order 9 Rule 13 of CPC was dismissed in default and order dated 19.01.2016 (Annexure P-5), vide which application for restoration was also dismissed.

2. Learned counsel for petitioner submits that respondent No.1 instituted a suit for permanent injunction, impleaded the present petitioner as defendant No.2. No summons were received by petitioner and respondent No.1 obtained *ex parte* judgment and decree dated 03.10.2005 (Annexure P-1). Petitioner moved application (Annexure P-2) under Order 9 Rule 13 CPC but to no avail.

3. Per contra, learned counsel for respondent No.1 submits that petitioner was rightly proceeded *ex parte*. The matter was compromised between the parties. Even petitioner has failed to explain the inordinate delay in filing the restoration application (Annexure P-4).

4. I have heard learned counsel for parties and gone through the case file.

5. Record reveals that petitioner herein preferred an application under Section 151 CPC (Annexure P-4) seeking to restore his earlier application under Order 9 Rule 13 for recalling *ex parte* judgment and decree dated 03.10.2005 rendered by learned Trial Court, *inter alia*, stating that plaintiff-respondent No.1 had obtained a false report from the Process Server, which resulted in passing of *ex parte* decree against him and he be granted an opportunity to defend himself as it was never his intention not to appear despite service.

5.1. Furthermore, following specific averments were made in application for restoration (Annexure P-4):

“3. That after coming to know about the passing of the judgment & decree dated 03.10.2005 the applicant engaged his counsel and file the application titled above, in which the respondents put their appearance. It is important to mention here that the performa respondents had also filed the application Under Order 9 rule 13 CPC for setting aside the above said judgment & decree dated 03.10.2005 and all the applications were clubbed and proceedings were initiated simultaneously. The respondent No.1 had also moved an application for providing police help and his application was also clubbed with the applications filed by the applicant as well as performa respondents.

4. That the cases were adjourned from time to time and the Hon’ble Court fixed the one date in all the cases detailed above. The cases were adjourned to 27.04.2013 for further proceedings before this Hon’ble Court. When the applicant through his counsel put his appearance, he was surprised to know that his case titled *Bahadur Singh Vs. Prem Chand* was not listed for today. On enquiry, it was revealed that vide order dated 13.08.2012 the file has been consigned. It is surprising fact in the order dated 13.08.2012 that the appearance of the counsel was recorded wrongly. The applicant’s counsel is Sh. Balwinder Singh whereas Sh. S.C.Bhardwaj is appearing for the plaintiff, Sh. B.K.Jindal is appearing through his counsel. It is revealed that on 13.08.2012 the Court recorded the presence of Sh. B.K.Jindal is not the counsel of the applicant and his counsel is Sh. Balwinder Singh, counsel of the plaintiff is Sh. S.C.Bhardwaj and the counsel for Narinder i.e. respondent No.2 is Sh. Baldev Singh Virk, which reveals that due to wrong reporting of the presence of the counsels and the respective parties resulted into passing of the order that there is a compromise between Raj Kumar, who compromised the matter with the plaintiff Bahadur Singh. Bahadur Singh is not the plaintiff but he is defendant no.2 and he

filed an application for setting aside the ex parte judgment & decree dated 03.10.2005.”

6. It is not shown on record whether the said averments were even opposed by respondent No.1/plaintiff by filing any reply.

7. Application was filed on 30.04.2013 which shows that the petitioner came to know of the impugned order on 27.04.2013. In course of hearing, on a Court query learned counsel for petitioner states as far as his information goes, no specific reply was filed and as aforesaid the averments have remained uncontroverted. It also appears to be so from reading of the impugned order which has not referred to or dealt with the reply to any of these averments, regardless whether there was any reply filed or not. In fact, order is very cryptic and based on no reasoning. I am unable to persuade myself to sustain the same.

8. Be that as it may, without commenting on the averments contained in application (Annexure P-4), the impugned order is set aside with direction to learned Trial Court to pass fresh orders on the same by giving reasons.

9. Needless to say, in case reply has not been filed, an opportunity be given to respondent No.1 to file reply.

10. Disposed of in above terms.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

01.05.2023
Vandana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No