

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 230 of 2018(O&M)
Date of Order:14.11.2023

Simranjeet Kaur

.Petitioner

Versus

Lalit Vikram

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Sanjay Jain, Advocate,
for the petitioner.**

**Mr. Gaurav Sethi, Advocate
for the respondent.**

ANIL KSHETARPAL, J

1. The petitioner herein was the defendant in a suit for possession by way of specific performance of the agreement to sell filed by the plaintiff.
2. During the pendency of the suit, the petitioner was proceeded against ex-parte. However, the trial court on appreciation of the ex-parte evidence dismissed the suit on 04.08.2015. The plaintiff (respondent) herein filed an appeal against the judgment and decree passed by the trial court. In the aforesaid appeal, the First Appellate Court dispensed with the service of notice to the petitioner on the ground that she was proceeded ex-parte before the trial court. The first appeal was allowed resulting in decree for possession by way of specific performance against the appellant and in favour of the plaintiff. She filed an application under Order IX Rule 13 CPC to set aside the ex-parte judgment and decree. In fact, the application should have been filed under Order XLI Rule 19 CPC for re-admission of the appeal. However, this court does not find it appropriate to dismiss the revision petition merely because the application was filed under a wrong

provision because in substance the petitioner prays for re-admission of the appeal.

3. The First Appellate Court has dismissed the application on the ground that the petitioner had the knowledge of the pending proceedings because she was served through her son for 17.10.2012 and 24.07.2012.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the petitioner contends that the enabling powers under sub-rule 4 of Rule 14 of Order XLI CPC is applicable to any proceedings incidental to an appeal and not to the main appeal. He submits that the First Appellate Court committed a manifest error while deciding the appeal without issuing the notice to the petitioner. He submits that the valuable rights accrue in favour of the petitioner once the suit filed by the respondent (plaintiff) was dismissed. He submits that the plaintiff filed first appeal in which it was necessary for the Court to issue notice to the petitioner and serve her.

6. On the other hand, the learned counsel representing the respondent while referring to Order XLI Rule 14 CPC submits that it was not necessary for the First Appellate Court to issue notice of the appeal particularly when the petitioner (defendant) in the trial Court was proceeded against ex-parte during the pendency of the suit.

7. This court has considered the submissions of the learned counsel representing the parties.

8. On careful reading of Order XLI Rule 14 (4) CPC, it is evident that the First Appellate Court has enabling powers to dispense with the service of notice of any proceedings incidental to an appeal on any

respondent, however, such power does not extend to the main appeal. Reliance in this regard can be placed on the judgment passed by the Supreme Court in *Hanumant Singh vs. Kiran Kumari and others, (2012) 1 SCC 225* and *Mohinder Singh and others vs. Karnail Singh and others, (2002) 1 PLJ, 435.*

9. The learned counsel representing the respondent failed to put forth any substantive argument to justify the order passed by the First Appellate Court.

10. Keeping in view the aforesaid facts, the impugned order dated 01.12.2017, is set aside. The appeal filed by the respondent shall be restored to its original number and the First Appellate Court is directed to decide the appeal afresh after hearing both the parties.

11. With these observations, the civil revision petition is allowed.

12. The parties through their learned counsel are directed to appear before the First Appellate Court, on 11.12.2023.

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

November 14, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO