

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

CR 3594/2016 (O&M)

Date of decision: 12.01.2023

Balbir Singh

.....Petitioner

Vs.

Sukhdev Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.GS Nagra, Advocate for the petitioner.
Mr. V.M. Gupta, Advocate for the respondents.

Nidhi Gupta, J.

This revision petition has been filed challenging the impugned orders dated 6.9.2011 and 10.12.2014 (Annexures P-3 and P-5) respectively passed by Civil Judge (Jr. Div.) Patiala, whereby the petitioner's application for restoration of application under Order 9 Rule 13 CPC, along with application for condonation of delay have been dismissed.

At the very outset, it is submitted by the learned counsel for the petitioner that the present revision petition is not maintainable under Order 43 Rule 1(d) CPC wherein it is stipulated as follows:-

“1. Appeal from orders – An appeal shall lie from the following orders under the provisions of section 104, namely: – (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte”.

It is submitted that as per above provision where an application under Order 9 Rule 13 CPC is dismissed, an appeal is admissible; and it is only if an application under Order 9 Rule 13 CPC is allowed that a Civil Revision is

maintainable. Ld. Counsel further refers to order dated 28.1.2016 passed by Addl. Distt. Judge, Patiala (Annexure P-8), whereby petitioner withdrew his appeal against impugned order dated 10.12.2014 under mistaken legal apprehension, and submits that the present revision petition may be dismissed as withdrawn with liberty to petitioner to file appeal.

In view of the above provision Order 43 Rule 1(d) CPC, the present revision petition is dismissed as withdrawn. Needless to say, petitioner is at liberty to seek appropriate remedy available to him under law, if any.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

12.01.2023
Joshi

Whether speaking/reasoned

Yes

Whether reportable

Yes/No