

2023:PHHC:080633

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

Date of Decision : 01.06.2023

1. CR-5578-2017(O&M)

Amrik Singh through Special Power of AttorneyPetitioner

VERSUS

Balwinder Kaur & OthersRespondents

2. CR-1107-2023 (O&M)

Amrik Singh through Special Power of AttorneyPetitioner

VERSUS

Balwinder Kaur & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. K.S. Cheema, Advocate for respondent Nos.1 to 3.

Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for respondent Nos.4 and 5.

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ALKA SARIN, J. (Oral)

1. The present order shall dispose of the above mentioned two
revision petitions i.e. CR-5578-2017(O&M) and CR-1107-2023 (O&M).

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2. Notice of motion in CR-1107-2003. Mr. K.S. Cheema, Advocate accepts notice on behalf of respondent Nos.1 to 3, while Ms. Harveen Kaur, Advocate accepts notice on behalf of respondent Nos.4 and 5.

3. The challenge in the revision petitions filed under Article 227 of the Constitution of India is to the order dated 02.07.2014 whereby the application filed by the petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) was dismissed in default as well as to the order dated 13.07.2017 whereby an application for recalling of order dated 02.07.2014 was also dismissed.

4. Learned counsel for the petitioner would contend that on 02.07.2014 when the application under Order 1 Rule 10 CPC for impleading him as a party was listed, his wife was unwell and hence he could not appear and the same was dismissed in default. On coming to know about the dismissal of the same, he immediately engaged a new counsel and filed an application on 31.07.2014. Vide the impugned order dated 13.07.2017 the application for recall was also dismissed. Aggrieved by the same the petitioner filed Civil Revision No.5578 of 2017. At the time of arguments, it transpired that inadvertently the order dated 02.07.2014 had not been challenged in the said revision petition. Hence, Civil Revision No.1107 of 2023 was filed challenging the order dated 02.07.2014. Learned counsel would further contend that the limited prayer in the present petitions is to recall the order dated 02.07.2014 dismissing his application under Order 1

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Rule 10 CPC in default and that the same may be heard on merits inasmuch as his rights would be affected.

5. Per contra, learned counsel for respondent Nos.1 to 3 and learned senior counsel appearing on behalf of respondent Nos.4 and 5 have vehemently contended that though the application was dismissed in default on 02.07.2014 and an application for recall was filed on 31.07.2014, however, the same was not pressed and the application was pressed only at the time of arguments and was eventually dismissed vide order dated 13.07.2017. Learned counsel would further contend that the application was filed only to delay the proceedings.

6. I have heard learned counsel for the parties.

7. In the present cases the limited prayer is to restore the application under Order 1 Rule 10 CPC to its original number for being heard and decided on merits. Cogent reasons have been given by the petitioner in his petition for his non-appearance on 02.07.2014. In order to do the complete justice between the parties, I deem it appropriate to set aside the impugned orders dated 02.07.2014 and 13.07.2017.

8. Accordingly, both the revision petitions are allowed, the impugned orders dated 02.07.2014 and 13.07.2017 are set aside and the application under Order 1 Rule 10 CPC is restored to its original number subject to costs of Rs.20,000/- to be equally divided amongst the respondents herein. The Trial Court is requested to expedite the hearing of

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the application under Order 1 Rule 10 CPC and to decide the same in
accordance with law. Pending applications, if any, also stand disposed off.

June 01, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO