

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

232

CR No. 5700 of 2018

Date of Decision: 28.07.2023

Sanjay Kumar

.....*Petitioner**Versus*

Kiran Bala and Ors.

.....*Respondents***CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.**Present: Mr. S.K. Aggarwal, Advocate
for the petitioner.

None for the respondents.

GURBIR SINGH, J (ORAL)

1 Challenge in this revision petition is to order dated 02.08.2018 (Annexure P-1) passed by the learned Additional District Judge, Kaithal, in Civil Appeal No.CA/27/2017 titled as Sanjay Kumar Vs. Kiran Bala and Ors, whereby the appeal filed by the petitioner was dismissed for non filing of courier charges and copy of grounds of appeal for summoning respondent No.4.

2 Learned counsel for the petitioner submits that the appeal could not be dismissed under order 9 Rule 2 CPC which is applicable to suits. Procedure for appeals is mentioned in Order XVI of CPC. Earlier there was a provision i.e. Order XVI Rule 18 CPC but said provisions has been omitted by Code of Civil Procedure (Amendment) Act, 1999. He further submits that before the learned trial Court all the defendants were being represented by Mr. B.N. Gupta, Advocate. In the appeal, Mr. B.N. Gupta, Advocate, had been appearing on behalf of respondents No.1 and 2. Respondent No.4 was having knowledge of the case but was not intentionally appearing in the Court.

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3 Heard.

4 The impugned orders dated 02.08.2018 are reproduced as
under:-

‘CNR No.HRKH01-000190-2017

CA/27/2017

Sanjay Kumar Vs Kiran Bala and others

Present:Shri Subhash Mehla, Advocate as
proxy counsel for the appellant-side.
Shri Gourav Wadhwa, Advocate as proxy
counsel for the respondents No. 1 & 2-side.
Respondent No. 3 already ex parte vide Order dated 10.03.2017.

Notice to the respondent No. 4 could not be issued again, for not
filing of courier charges and copy of Grounds of appeal. It is a
consecutive 4th default on the part of the appellant, to make compliance
on his part. Significantly, the opportunity for the even date was granted
as 'last opportunity'. Even then, the compliance of the previous Order
dated 26.03.2018 was not made on the part of the appellant-side. So, the
appeal in hand is dismissed under **Order IX Rule 2 of the Code of Civil
Procedure.**

File be consigned to the Records.

Date of Order 02.08.2018
Roshan, Stenographer Gr.I

Vivek Nasir
Addl. District Judge,
Kaithal UID No HR0177

Present:Shri Subhash Mehla, Advocate as
proxy counsel for the appellant-side.
Shri Gourav Wadhwa, Advocate as proxy
counsel for the respondents No. 1 & 2-side.
Respondent No. 3 already ex parte vide Order dated 10.03.2017.

It is 10.45 A.M., that a copy of Grounds of appeal is presented by
Shri Subhash Mehla, Advocate, appearing as proxy counsel on behalf of
the appellant-side, because the work in the Courts on the even date, is
suspended by the local Bar, vide the resolution of the even date, on
account of sad demise of two Advocates (Sh. Rai Singh and Sh. Birbal
Dhania) registered with the local bar. However, the appeal has already
been dismissed, vide the previous Order of the even date. As such,
nothing can be effected by this development. Even otherwise, the period
for filing such copy and for depositing the courier charges, was one week
from the Order dated 26.03.2018, which has lapsed long before. On this
count also, there is no ground to entertain the present act on behalf of the
learned proxy counsel for the appellant-side. Compliance of the previous
Order of the even date be made.

Date of Order 02.08.2018
Roshan, Stenographer Gr.I

Vivek Nasir
Addl. District Judge,
Kaithal UID No HR0177'

5 On the same very date, copy of grounds of appeal was filed but
at 10.45 a.m., learned Appellate Court even failed to consider the same and
passed the order that compliance was to be made within a week of passing of

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the previous order. The parties should not suffer on account of mere technicalities. If, there was default, other parties could be compensated with costs but a person should not be non-suited merely on the ground that he failed to comply with the order. The appeal could not be dismissed under Order IX Rule 2 of CPC. So, order dated 02.08.2018 is not sustainable in the eyes of law.

6 Accordingly, the revision petition is allowed and order dated 02.08.2018 (Annexure P-1) is hereby set aside. Appeal is ordered to be restored to its original number subject to payment of Rs.5000/- as costs to be deposited with the concerned District Legal Services Authority.

7 Petitioner shall appear before the learned Appellate Court within three weeks and notice to the other parties be issued and the appeal shall be decided on merit.

(GURBIR SINGH)
JUDGE

28.07.2023

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No