

2023:PHHC:126935

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-2803-2023

Reserved on : 14.09.2023

Pronounced on : 29.09.2023

Darshan Kaur

.....Petitioner

Versus

Sukhdev Singh @ Sukha Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by : Mr. Suresh Kumar Arya, Advocate for the petitioner.

NAMIT KUMAR, J.

1. The challenge in the instant revision petition filed under Section 227 of the Constitution of India is to the order dated 16.01.2023 (Annexure P-6) passed by learned Civil Judge (Junior Division), Amritsar, whereby 3rd application filed by the petitioner for the restoration of his application filed under Order 9 Rule 13 read with Section 151 CPC which was dismissed in default vide order dated 04.01.2017 (Annexure P-3) and for restoration of his 1st application filed for restoration of his application filed under Order 9 rule 13 read with Section 151 CPC which was dismissed in default on 30.09.2019 (Annexure P-4), has been dismissed.

2. The brief facts leading to the filing of the present petition as has been narrated in the petition are that respondents No.1 and 2/plaintiffs have filed a Civil Suit No.96338 of 2013 titled as 'Sukhdev Singh and another Vs. Darshan Kaur and another' on 28.05.2012 for

grant of damages against the petitioner/defendant in which the petitioner/defendant was proceeded against exparte on 05.09.2012 and respondents No.1 and 2/plaintiffs have obtained exparte judgment and decree dated 23.08.2014 passed by the learned Civil Judge (Junior Division), Amritsar by mentioning of wrong address of petitioner/defendant-Darshan Kaur. When the petitioner came to know about exparte decree dated 23.08.2014, she filed an application bearing No.478 of 2015 under Order 9 Rule 13 read with Section 151 of CPC on 27.04.2015 for setting aside the exparte decree dated 23.08.2014. Counsel for the petitioner did not appear in the Court to further pursue the said application and due to which the said application was dismissed in default on 04.01.2017. Thereafter, the petitioner filed another application bearing No.339 of 2018 for restoration of application bearing No.478 of 2015 filed for setting aside the ex-parte judgment and decree dated 23.08.2014. The counsel for the petitioner again did not appear before the Court due to which the said application was also dismissed in default on 30.09.2019. Thereafter, the petitioner filed 2nd application bearing No.88 of 2022 for restoration of application bearing No.478 of 2015 as well as 1st application bearing No.339 of 2018 which was dismissed by learned Civil Judge (Junior Division) vide impugned order dated 16.01.2023. Aggrieved against the said order, the petitioner has filed the present revision petition.

3. Learned counsel for the petitioner submits that during the pendency of application bearing No.478 of 2015 filed under Order 9

Rule 13 read with Section 151 of CPC which was filed for setting aside the exparte judgment and decree dated 23.08.2014, the counsel representing the petitioner said her that she need not to come in the Court on every date of hearing and when her presence is required he will call her. Thereafter, the said counsel had neither appeared in the Court nor informed the petitioner regarding the status of the application due to which the said application was dismissed in default on 04.01.2017. The petitioner could not contact his counsel because she got admitted in the hospital and has 50% disability and when she recovered and came to know that her application was dismissed in default, fresh application bearing No.339 of 2018 for restoration of application under Order 9 Rule 13 read with Section 151 of CPC was filed by her but again her counsel did not appear before the Court and the said application was also dismissed in default on 30.09.2019. Due to Covid-19 pandemic the petitioner could not contact her counsel and was not aware about the dismissal of application bearing No.339 of 2018. When the petitioner came to know about the dismissal of her application, she engaged a new counsel and filed another application bearing No.88 of 2022 for restoration of application bearing No.478 of 2015 as well as application bearing No.339 of 2018, which has been dismissed on merits by the learned Civil Judge (Junior Division), Amritsar vide impugned order dated 16.01.2023. He further submits that the absence of the petitioner before the Court was neither intentional nor willful but due to the reasons stated above. Therefore, the impugned orders dated

04.01.2017, 30.09.2019 and 16.01.2023 passed by learned Civil Judge (Junior Division), Amritsar may kindly be set aside and one effective opportunity for arguing the application filed under Order 9 Rule 13 read with Section 151 of CPC may be granted to the petitioner.

4. I have heard learned counsel for the petitioner and perused the relevant documents.

5. Admittedly, the petitioner was proceeded against exparte on 05.09.2012 and exparte judgment and decree dated 23.08.2014 was passed by learned Civil Judge (Junior Division), Amritsar in favour of the plaintiffs. The petitioner has filed an application bearing No.478 of 2015 under Order 9 Rule 13 read with Section 151 of CPC on 27.04.2015 for setting aside the exparte decree dated 23.08.2014 which was dismissed in default vide order dated 04.01.2017. Thereafter, the petitioner has filed application bearing No.339 of 2018 for restoration of application bearing No.478 of 2015 which was also dismissed in default on 30.09.2019. The petitioner again filed application bearing No.88 of 2022 for restoration of application bearing No.478 of 2015 as well as application bearing No.339 of 2018, which was dismissed on merit by the learned Civil Judge (Junior Division) vide impugned order dated 16.01.2023. The concluding para of the said order reads as under :-

“I have carefully heard both the counsel for the parties on application under consideration. The applicant filed the present application for restoration of application under Order 9 Rule 13 CPC dismissed in default on 30.09.2019 and 01.10.2019. The applicant came with the stand that the exparte Judgment and decree dated 23.08.2014 was passed at her back. She engaged Sh. N.K.

Soni Advocate to pursue and file application u/o 9 Rule 13 CPC for setting aside the exparte Judgment and decree dated 23.08.2014. It is stated that her counsel did not pursue her matter due to which her application u/o 9 Rule 13 CPC was dismissed in default on 30.09.2019 and 01.10.2019. She requested that her application u/o 9 Rule 13 CPC may kindly be restored. Upon notice, the respondents have appeared through counsel and they have filed detailed reply to present application. The facts came in the reply of respondents are alarming in nature. The respondents pleaded that this is fourth application for restoration of application u/o 9 rule 13 CPC dismissed in default on 30.09.2019 and 01.10.2019. The counsel for the respondents argued that the applicant is in habit to change her counsel after arguing the matter and in this way she filed four applications on same sets of facts and wasted the valuable time of this court. The applicant has failed to file any reply to counter the allegations leveled by the respondents against her in their reply. Even, the counsel for applicant during course of arguments failed to rebut the arguments raised by counsel for respondents qua filing of four applications by the applicant on same sets of facts as that of present application. Certainly, the applicant is wasting the time of this court by moving applications time and again on the same sets of facts which is not permissible. Further, the applicant cannot be allowed to take the advantages of her own wrongs. The applicant has intentionally put the burden of her negligence upon her counsel in order to claim mercy and the relief from court. If the first application of applicant for restoration of application under Order 9 Rule 13 CPC was dismissed in default then it is presumed that the applicant should act more diligently. The applicant did not show any interest to pursue her application due to which her three applications on the same sets of facts as that of present applications were dismissed in default. It seems that the applicant opt the way of court only when court press the paddle in execution application. The conduct of applicant clearly shows that she is not entitled for any concession. Accordingly, I do not find any merit in the present application and same is dismissed subject of costs of Rs.10,000/- to be deposited by the applicant with District

Legal Services Authority, Amritsar for wasting the precious time of this court. It is made clear that payment of costs shall be condition precedent before claiming any relief by the applicant qua the present case. File be consigned to record room and be tagged with the main file.”

6. Perusal of the impugned order dated 16.01.2023 shows that no plausible explanation has been given by the petitioner for non-appearance before the Trial Court. The earlier two applications filed by the petitioner were dismissed in default on 04.01.2017 and 30.09.2019 and every time she puts blame on her counsel for her negligence and non-appearance before the Trial Court. The matter is lingering since 2012 and the petitioner is wasting the precious time of the Court by moving applications time and again but not pursuing the same.

7. Keeping in view the facts and circumstances of the present case and also the conduct of the petitioner, I do not find any infirmity or illegality in the impugned order dated 16.01.2023 passed by learned Civil Judge (Junior Division), Amritsar. Consequently, the instant revision petition, being devoid of any merit, is hereby dismissed.

29.09.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	No