

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

CR-5001-2019(O&M)

Reserved on:-9.5.2023

Dater of Pronouncement:-17.5.2023

Kuldeep Kaur

...Petitioner

Versus

Ram Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Dinesh Nagar, Advocate
for the petitioner.

Mr.Munish Gupta, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 23.7.2019 passed by Civil Judge (Jr.Divn.), Hoshiarpur vide which an application under Order 9 Rule 13 CPC for setting aside of ex-parte judgment and decree dated 13.8.2018 filed by the respondents had been allowed.

2. Briefly stated, the facts of the case are that plaintiff Kuldeep Kaur had brought a suit for declaration and permanent injunction against defendants Ram Kaur and others. In that civil suit all the defendants had been proceeded against ex-parte and vide judgment and decree dated 13.8.2018, the suit was decreed ex-parte by Civil Judge (Jr.Divn.), Hoshiarpur.

3. Subsequently defendant No.1 Smt.Ram Kaur and defendant

No.3 Sarabjit Singh had filed an application under Order 9 Rule 13 CPC for setting aside of the ex-parte judgment and decree contending that they were never served in the civil suit and were wrongly proceeded against ex-parte; as per the zimny orders passed in the civil suit, the Court had ordered issuance of summons through registered AD post various times and plaintiff had been directed to take dasti summons; the plaintiff did not do so and on the summons sent through ordinary process, a false report was obtained that the address of defendants was not complete, though the Court had directed issuance of summons by giving correct address but it was not so done, rather an application under Order 5 Rule 20 CPC was filed on behalf of the plaintiff and publication was ordered to be made and after publication the defendants were proceeded against ex-parte; earlier the applicants had contested the mutation proceedings also and resultantly mutation had been sanctioned in their favour on the basis of Will dated 2.11.1999 executed by Smt.Balwant Kaur widow of Kartar Singh; the plaintiff had filed a civil suit earlier, which was dismissed vide order dated 14.5.2015, in that suit the plaintiff had admitted the possession of the petitioners as well as Will executed by Balwant Kaur in favour of the petitioners. The applicants sought an opportunity to contest the suit by setting aside of ex-parte judgment and decree. The application was filed on 26.3.2019.

4. Notice of the application was given to the plaintiffs/respondents, who had put in appearance through counsel.

5. After contest, the application was accepted by the trial Court vide order dated 23.7.2019, leaving the respondent/plaintiff aggrieved and

she has approached this Court by way of filing the revision petition, notice of which was given to the respondents/defendants and respondents No.1 and 2 have put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the revision petition.

7. The stand taken by the defendants No.1 and 3 in the application filed by them seems to be plausible and convincing. The substantial rights of the parties needed adjudication in the civil suit. It being so, it would have been unfair to close the doors of contest upon defendants No.1 to 3 by dismissing their application for setting aside of ex-parte judgment and decree. It is always desirable to adjudicate a *lis* on merits rather than deciding a dispute considering version of one party only and not affording opportunity of being heard and presenting its point to the opposite party. There has not been much delay in approaching the Court for setting aside of the ex-parte judgment and decree. The ex-parte judgment and decree were passed on 13.8.2018, whereas the application was filed on 26.3.2019. According to the applicants/defendants, they had come to know about passing of judgment/decree on 25.3.2019 when Sh.Manjit Singh Rai, Municipal Councilor, Parhira had told applicant No.1 Ram Kaur that son of plaintiff had come to him and informed that some ex-parte decree regarding estate of Balwant Kaur had been passed.

8. I find that the applicants have been able to render a reasonable and plausible explanation for not putting in appearance in the trial Court, which was for the reason that they had not been properly

served.

9. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

10. Finding no merit in the revision petition, the same stands dismissed.

11. The interim order dated 6.1.2020 passed by this Court staying further proceedings before the trial Court thus comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

17.5.2023

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(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No