

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 2892 of 2021 (O&M)****Date of Decision: 23.11.2023**

Smt. Roshni and Others

... Petitioner(s)

Versus

Ram Karan

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Parveen Sharma, Advocate
for the petitioner(s).Mr. K.C.Rajput, Advocate
for the respondents.**Anil Kshetarpal, J.**

1. The petitioners herein are the plaintiffs. They filed a suit for the grant of decree of declaration and mandatory injunction with a consequential relief of permanent injunction. The plaintiff No.1 is a widow, whereas the plaintiff No. 2 to 5 are her daughters.

2. During the pendency of the suit, the defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") with a prayer to reject the suit on account of the fact that the court fee so affixed is insufficient. The plaintiffs were granted an opportunity to file a reply to the application. However, despite grant of various opportunities, reply to the application was not filed by the plaintiffs. Ultimately, on 20.02.2019, neither the plaintiffs nor their counsel did appear and the suit was dismissed for non-prosecution. An application was filed for restoration of the suit, which was also dismissed.

3 Heard the learned counsel representing the parties at length and

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with their able assistance, perused the paper book.

4. The learned counsel representing the petitioners contends that on 20.02.2019, the case was fixed for filing a reply to the application filed by the defendant under Order VII Rule 11 CPC. At the most, the Court could have decided the application under Order VII Rule 11 CPC by hearing the *ex parte* arguments. The main suit was not listed for any other proceedings. Hence, it was not appropriate for the trial Court to dismiss the suit for non-prosecution.

5. The learned counsel representing the respondent submits that this is a normal practice adopted by the Courts.

6. This Court has considered the submissions of the learned counsel representing the parties. If a practice is not supported by law, it must come to an end.

7. The Court can dismiss the suit in default only if the suit is listed for hearing. If a miscellaneous application has been listed on a particular date for hearing, a decision on that application can be taken.

8. Keeping in view the aforesaid facts, the present revision petition is allowed. The impugned order dated 20.08.2021 is set aside. The suit is ordered to be restored at its original number. The parties, through their learned counsel, are directed to appear before the trial Court on 20.12.2023.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 23, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No