

110 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-6379-2019 (O&M)  
DECIDED ON: 20.07.2023

JAGJIT KAUR

.....PETITIONER

VERSUS

MADAN MOHAN KAPUR(DECEASED) THROUGH LRS

.....RESPONDENT

**CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.**

Present: Mr. Manish Prabhakar, Advocate  
for the petitioner.

Mr. J.S. Thind, Advocate and  
Ms. Rupinder Kaur Thind Advocate for  
for respondent No.1(d)

**VIKRAM AGGARWAL, J (ORAL)**

1. The present civil revision petition assails the order dated 23.07.2019 (Annexure P-1) by way of which the application filed by the present petitioner under Order 9 Rule 4 CPC seeking restoration of the application filed by the petitioner under Order 9 Rule 13 for setting aside the ex parte judgment and decree dated 17.07.2009 was dismissed.

2. The facts of the case, briefly put, are that respondent No.1- Madan Mohan Kapur instituted a suit against the present petitioner on 03.03.2005. The present petitioner-defendant was proceeded against ex parte stating that she had not appeared despite service. An ex parte decree was passed on 17.07.2009. The petitioner-defendant preferred an application under Order 9 Rule 13 CPC for setting aside the ex parte decree in the year 2011. This application came to be dismissed in default on 02.08.2014 as a result of which an application for restoration of the said application was filed on 10.09.2014. By way of the impugned order dated 23.07.2019, the said

application was also dismissed.

3. Learned counsel for the petitioner has strenuously urged that the impugned order is not sustainable. He submits that the petitioner was wrongly proceeded against ex parte and then an ex parte judgment and decree was passed against the petitioner. He submits that when the application for restoration of the application under Order 9 Rule 13 was fixed on 18.03.2014, the Court was apprised that Mr. Madan Mohan Kapur had expired and his legal representatives were to be brought on record. He submits that thereafter on 18.04.2014, the case was adjourned to 22.05.2014 but in the order the date mentioned was 03.09.2014. Both counsel appeared before the Court on 22.05.2014 and the Court adjourned the case to 03.09.2014. However in the order, the date mentioned was 02.08.2014. which was not in the notice of the counsel. On 02.08.2014, the application for restoration was dismissed in default. Learned counsel submits that the Court gravely erred in repeatedly changing the dates and then ultimately dismissing the application in default. He submits that the Court should have taken a pragmatic view and should have allowed the application.

4. On the other hand, learned counsel for the respondent has opposed the petition stating that the impugned order would be appealable since an order passed on an application moved under Order 9 Rule 9 CPC is appealable as per the provisions of Order 43 CPC. It has also been contended that the case had been adjourned to 02.08.2014 in the presence of both the parties and, therefore, it cannot be now said that the case had in fact been adjourned to 03.09.2014.

5. I have considered the submissions made by learned counsel for the parties. In the considered opinion of this Court, the manner in which the application for restoration was dealt with by the trial Court leaves a lot to be

desired. The trial Court, in the considered opinion of this Court should have been more vigilant in dealing with the case. Not only this, issues were framed on the application filed under Order 9 Rule 4 CPC and the same itself is pending for 5 years. There is absolutely no justification for an application of this kind remaining pending for 5 years. Be that as it may, the order dated 18.04.2014 which is on record as Annexure P-7 shows that the case had been adjourned to 03.09.2014. However, the case was taken up on 22.05.2014 and the said order is on record as Annexure P-8. On 22.05.2014, the following order was passed:-

*“In the last zimni order, the next date of adjournment has been inadvertently typed as 03.09.2014 whereas the same has been written as 22.05.2014 on the index cover of the file. Even both the parties along with their counsel are present today in the Court. As such previous order rectified to that extent.*

*Today Mr. N.S. Kamboj, advocate requested for an adjournment for filing the power of attorney on behalf of the applicant/defendant. Similarly, adjournment has been made by the learned counsel for respondent/plaintiff for filing an application for impleading Lrs of deceased respondent/plaintiff.*

*In view of the request made by the learned counsel for the parties, case is adjourned to 02.08.2014 for filing a power of attorney by the learned counsel for the applicant/defendant and filing of application for impleading Lrs of respondent/plaintiff.”*

In this order, the next date is reflected as 02.08.2014 whereas the specific case of learned counsel for the petitioner is that the date informed to counsel for the parties was 03.09.2014. Though this fact has been opposed by learned counsel for the respondent, I am inclined to accept the stand taken by learned

counsel for the petitioner because ultimately on 02.08.2014, the following order was passed:-

*“Case called for several times since morning and after lunch break at repeated intervals. But neither applicant nor anyone else appeared on his behalf in the Court. It is already 3.30 p.m. Hence the present petition is dismissed in default. File complete in all aspects be consigned to the Judicial Record Room”.*

The order shows that no one had appeared on behalf of either party meaning thereby that both counsel had noted the date 03.09.2014 whereas the matter was taken on 02.08.2014 and the application for restoration was dismissed in default. When an application under Order 9 Rule 4 for restoring the application under Order 9 Rule 13 was moved, the same was also dismissed by way of the impugned order which seeks to justify the proceedings in the Court.

6. In the considered opinion of this Court, the trial Court should have taken a pragmatic view of the whole matter and instead of keeping the application pending for 5 years, the same should have been dealt with expeditiously. It has been pointed out by learned counsel for the parties that there was some stay order by this Court as a result of which the decision in the application may have been delayed. However, even if that be the case, the trial Court could have avoided framing issues on an application under Order 9 Rule 4. View from any angle, the order passed by the trial Court is not sustainable. The argument that the present impugned order is appealable is devoid of merit as Order 43 does not provide an appeal against an order passed under Order 9 Rule 4 CPC.

In view of the above, the present revision petition is allowed. The

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order dated 23.07.2019 passed by the Civil Judge (Junior Division), Amritsar is set aside and the application filed by the present petitioner under Order 9 Rule 13 for setting aside the ex parte judgment and decree dated 17.07.2009 is restored to its original number. Keeping in view the fact that a number of years have gone by, the trial Court is directed to decide the application within a period of three months even if very short dates have to be given. It would be needless to mention that in case any request for adjournment is made by either side, the time period fixed by this Court shall be automatically extended for the period for which an adjournment is granted.

20.07.2023  
Prince Chawla

(VIKRAM AGGARWAL)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |