

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCR No.760 of 2018 (O&M)
Date of Order:07.02.2024

Kaushalya Devi

.Petitioner

Versus

Rameshwari Devi and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Yowan Sharma, Advocate
for the petitioner.Mr. Omparkash Mahour, Advocate
for the respondents.ANIL KSHETARPAL, J

1. In this revision petition, the plaintiff assails the correctness of the order passed by the trial court while setting aside the ex-parte decree passed against the respondents in order to give her an opportunity to contest the suit.

2. The plaintiff filed a suit for grant of decree of mandatory injunction and also for issuing directions to the defendants to remove their construction from the suit land comprised in khasra no.81(2-13) and 82(3-0).

3. On receipt of the notice, defendant no.1 engaged the counsel and filed an application under Order VII Rule 11 CPC to reject the plaint. At that time, the counsel representing the respondents assured that the plaint shall be rejected and he would inform as and when the presence of defendant no.1 is required. Subsequently, the proceedings which were previously pending in the court at Panchkula were transferred to Kalka.

3. The application under Order VII Rule 11 CPC was dismissed,

however, the learned counsel misplaced the contact number of defendant no.1, resulting in ex-parte decree.

4. The trial court on appreciation of these facts, has exercised discretion and found that defendant no.1 has been deprived of an opportunity to properly contest the case.

5. The learned counsel representing the petitioner has read over the contents of the application filed for setting aside the decree.

6. The court requested the learned counsel representing the petitioner to point out any error in the impugned order, however, he failed to show that. In any case, the sufficient cause for non appearance depends upon subjective satisfaction of the court. In this case, the trial court has found that the explanation rendered by defendant no.1 is sufficient to explain her absence. The ex-parte decree seeks to demolish the residential house constructed by the defendant.

7. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

8. Dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

February 07, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO