

2024:PHHC:093750



130 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3213-2024 (O&M)
Decided on:-24.07.2024

Nasib KaurPetitioner..

vs.

Kuldeep Singh (deceased) thr. Lrs.Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Chandeeep Singh, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

1. At the outset, learned counsel for the petitioner submits that he would not press the present revision petition as regards the prayer for setting aside of the order dated 31.10.2023 passed in Execution No.7 of 2021, titled as “*Kuldeep Singh vs. Nasib Kaur*” (CIS No.OBJ/10/2023) passed by the learned Civil Judge (Junior Division), Khamanon, District Fatehgarh Sahib, with liberty to file a fresh revision petition.

Allowed as prayed for.

2. Now in the present revision petition, challenge remains to an order dated 31.10.2023 passed by the Civil Judge (Junior Division), Khamanon, District Fatehgarh Sahib, whereby an application for restoration of application under Order 9 Rule 13 CPC, moved at the instance of petitioner-defendant, seeking setting aside of the ex-parte judgment and

decree dated 16.02.2021, stands declined.

3. Briefly stating, respondents-plaintiffs filed a suit for possession by way of specific performance in relation to the property in question while relying upon an agreement to sell dated 10.09.2015 executed by the defendant in favour of the plaintiff. In the said suit, the petitioner-defendant was proceeded against ex-parte on 02.08.2017, followed by an ex-parte judgment and decree dated 16.02.2021 passed against her. Later, in August 2021, the petitioner-defendant moved an application before the Trial Court, seeking setting aside of the ex-parte judgment and decree dated 16.02.2021 while invoking Order 9 Rule 13 CPC. Notice was issued in the said application, however, before service upon respondents-plaintiffs could be effected, the same was dismissed in default vide order dated 07.10.2022 on account of non-appearance of the petitioner-defendant as well as her counsel. Subsequently, on 20.07.2023, an application for restoration thereof came to be filed at the instance of petitioner-defendant, which was dismissed by the Trial Court vide order dated 31.10.2023.

4. Impugning the aforesaid order, learned counsel for the petitioner submits that the petitioner happens to be an old lady of 85 years of age and is a resident of Samrala, District Ludhiana, whereas the proceedings arising out of the suit in question were pending at Khamanon, District Fatehgarh Sahib and thus, her non-appearance before the Court concerned was neither intentional nor willful but on account of bonafide reasons.

He further submits that the petitioner having engaged an Advocate before the trial Court, was assured that as and when her presence was required, she would be called upon by her lawyer but without even

informing her, proceedings were effected against her and the application under Order 9 Rule 13 was dismissed for non-prosecution.

5. I have heard learned counsel for the petitioner and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

6. In the present case, as a matter of record, the petitioner happens to be an old lady of 85 years of age and is a permanent resident of Samrala, District Ludhiana, whereas, the proceedings arising out of suit in question were pending before the Civil Judge (Junior Division), Khamanon, District Fatehgarh Sahib. The petitioner being an old lady engaged an Advocate to contest the suit on her behalf and thus, no malafide can be attributed to her on account of her non-appearance. The passing of the impugned order has caused serious prejudice to the substantial rights of the petitioner and thus, in such circumstances adopting a pragmatic approach rather than non-suiting the petitioner on hypertechnical grounds, the impugned order dated 31.10.2023, is hereby set aside, so as to afford her reasonable and effective opportunity to pursue her suit.

7. Resultantly, the impugned order dated 31.10.2023, passed by the trial Court is set side and the matter is restored to its original number before the trial Court for adjudication upon an application filed under Order 9 Rule 13 CPC moved at the instance of petitioner, seeking setting aside of ex-parte judgment and decree dated 16.02.2021.

8. The present petition is being allowed without issuing any notice to the respondents-defendants as it would have burdened them towards unnecessary litigation expenses, moreover, they were not even served before

the trial Court at the time when the application for restoration was dismissed.

9. Pending application, if any, also stands disposed of.

24.07.2024

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No