



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

138

CR-4269 of 2024 (O&M)

Decided on: 01.08.2024

Sunil

...Petitioner

Versus

Ranbir Singh

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Ashwani Kumar Antil, Advocate
for the petitioner.

RITU TAGORE, J.

1. This revision is directed against the order dated 17.05.2024 (Annexure P-6) whereby the application (Annexure P-5) under 9 Rule 4 read with Section 151, 152, 153 Code of Civil Procedure, 1908 (for short as 'CPC') for restoration of application under Order 9 Rule 7 CPC has been dismissed in Suit bearing No.379-2017 captioned as 'Ranbir Singh Vs. Sunil' by Additional Civil Judge (Senior Division), Kharkhoda, Sonapat with further prayer to direct the learned trial Court to decide the application after giving him reasonable opportunity of hearing.

2. Learned counsel submits that respondent/plaintiff instituted a suit for declaration and possession, with consequential relief of permanent



injunction against the petitioner, which is pending in the Court of Additional Civil Judge (Senior Division), Kharkhoda, Sonapat. The petitioner/defendant appeared and joined the proceedings of the suit. However, due to non-appearance of the petitioner in the Court, he was proceeded against *ex parte* vide order dated 03.08.2018 (Annexure P-1).

3. Learned counsel further submits that the counsel engaged by the petitioner did not properly handle the suit on the behalf of the petitioner and further due to spread of Covid-19, the petitioner could not appear in the case. Thereafter, he moved an application under Order 9 Rule 7 CPC (Annexure P-2) for setting aside *ex parte* order dated 03.08.2018 and proceedings against him. It is stated that said application was also dismissed by the learned trial Court vide order dated 11.05.2022 (Annexure P-3).

4. Learned counsel further contends that on account of suspension of work by the Bar Association, Kharkhoda, petitioner's counsel could not attend the Court, note and ascertain the exact date of hearing. Due to inadvertence, the petitioner noted the next date of hearing as 11.07.2022 instead 11.05.2022. On gaining the knowledge of dismissal of the application, the petitioner moved an application dated 10.08.2022 (Annexure P-5) under 9 Rule 4 read with Section 151, 152, 153 CPC for restoration of the application. Learned counsel further argues that the application dated 10.08.2022 (Annexure P-5) remained pending before the learned trial Court for about two years and the same was dismissed vide order dated 17.05.2024 (Annexure P-6).

5. It is stated that impugned order has harshly affected the petitioner as he has been prevented from pursuing his case. It is stated that



default on the part of the petitioner was not willful but due to the reasons explained in his applications. Learned counsel submits that he be given one opportunity to plead his case.

6. Considering the limited prayer made in this revision, notice to respondent is dispensed with at this stage.

7. I have heard learned counsel for the petitioner and have gone through the paper book.

8. It is trite that all rules of procedure are the handmaid of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Although the facts of the present case suggest that there has been negligence and carelessness on the part of the petitioner in not prosecuting the litigation with due diligence, but still, it cannot be suggested that delay has been caused by the petitioner for any malevolent reasons. It is well established that the Court should adopt a liberal approach, and rights of the parties should be adjudicated on the merits of the controversy, rather than thwarting the same on rigid technicalities. Furthermore, the counsel on behalf of the petitioner submits that one opportunity be given to the petitioner to put forth his stand and address arguments on application for setting aside the *ex parte* proceedings against him.

9. In these circumstances, to do complete justice between the parties, I believe that one effective opportunity should be granted to the petitioner to address arguments on the application for setting aside *ex parte* proceedings carried out against him. Accordingly, impugned order dated



17.05.2024 (Annexure P-6) is set aside, subject to payment of Rs.25,000/- as costs payable by the petitioner to respondent (plaintiff).

10. Petitioner is directed to appear before the learned trial Court on the due date of hearing as fixed before it and the petitioner shall address arguments on the application for setting aside *ex parte* proceedings carried against him as indicated above. Being an old case, it is expected that parties shall not take any undue adjournment on the due date of hearing as fixed before the learned trial Court, or the date as given by the learned Court.

11. Revision petition stands allowed accordingly.

12. It is made clear that in case of default, this order shall automatically stand vacated.

13. Respondent if not satisfied with this order, may move an application for recalling of this order within 30 days.

14. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

01.08.2024
Rimpal

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