

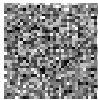
**127 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-5377-2024****Date of Decision: September 18, 2024****Puri Construction and Company****...Petitioner****Versus****Anshul Verma and another****...Respondents****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present:-** Mr. Surmeet Singh Sandhu, Advocate for the petitioner.**DEEPAK GUPTA, J.(Oral)**

Suit for recovery (Annexure P-1) was filed by the petitioner against two defendants, namely, Anshul Verma (defendant No.1) and Amaneet Pal Singh (defendant No.2). Notice sent to defendant No.1 was received with the report of incorrect address. The Court asked the plaintiff to provide the correct address of defendant No.1, but plaintiff failed to do so despite final opportunity. In the circumstances, the suit of the plaintiff against defendant No.1 was dismissed by the trial Court by way of the impugned order dated 15.03.2024. Plaintiff-petitioner moved an application under Order 9 Rule 9 CPC for setting aside the order dated 15.03.2024, but the trial Court dismissed the same by way of impugned order dated 07.08.2024 (Annexure P-4) by observing that provisions of Order 9 Rule 9 CPC are not applicable in this case.

2. The aforesaid orders have been assailed by way of the present revision petition.

3. The trial Court is right in observing that the provisions of Order 9 Rule 9 CPC are applicable when the suit is wholly or partly dismissed under Order 9 Rule 8 CPC and not when the suit is dismissed against any defendant under Rule 5 of Order 9 CPC. However, plaintiff cannot be left without any remedy in the said facts and circumstances.

4. The suit was for recovery and the main claim is against defendant No.1. Instead of dismissing the application for recalling the order dated 15.03.2024, the plaintiff could have been burdened with costs as his



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right to contest the suit on merits cannot be scuttled. As such, the impugned order 07.08.2024 (Annexure P-4) and the previous order dated 15.03.2024 (Annexure P-2) are hereby set aside, but subject to payment of ₹10,000/- as costs.

5. The next date of hearing before the trial Court is stated to be 28.11.2024. The petitioner shall appear before the trial Court on the date fixed and provide the correct and latest address of defendant No.1 and on the same date of hearing, he shall pay the costs of ₹10,000/- to be deposited in the District Legal Services Authority, Kapurthala.

Disposed of.

September 18, 2024

sarita

Whether reasoned/speaking:
Whether reportable:

(DEEPAK GUPTA)
JUDGE

Yes/No
Yes/No