



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5841 of 2023

Date of decision : 05.09.2024

Sukhminder Singh

....Petitioner

Versus

Ramandeep Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Liaqat Ali, Advocate
for the petitioner.

Mr. Gurcharan Dass, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

Present revision petition is directed against the order dated 18th of September, 2023 passed by Civil Judge (Junior Division), Ludhiana allowing the application filed by respondent No.1 under Order IX Rule 13 CPC setting aside *ex parte* judgment and decree dated 3rd of October, 2022.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the petitioner as the plaintiff and the respondents as the defendants.

3. Plaintiff filed suit against his son and daughter-in-law seeking decree of mandatory injunction directing the respondents to vacate part of house in their possession and further seeking decree of permanent injunction seeking restrain against the defendants from parting with the possession of



the said portion and from transferring possession of the same to any other person. Further relief sought was for recovery of mesne profits @ Rs.10,000/- per month from the date of filing of the suit till the vacation of the property. Defendants were proceeded *ex parte* vide order dated 22th of November, 2021. Suit filed by the plaintiff was decreed by Civil Judge (Junior Division) Ludhiana vide judgment and decree dated 3rd of October, 2022.

4. Respondent No.1 filed application under Order IX Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 3rd of October, 2022 pleading that she was married to son of the plaintiff on 29th of January, 2017 and came to her matrimonial house i.e. the house in question. Out of the wedlock, one son namely Jaivir Singh was born on 29th of December, 2017. After sometime, few differences cropped up between the husband and wife. Panchayat was convened. As per the decision, both the respondents were given first floor of the house and were permitted to live separately from the plaintiff. After couple of months respondent No.1/husband abandoned her and started residing with his parents on the ground floor. In order to get rid of respondent No.1, the plaintiff as well as his son hatched a conspiracy and filed present suit. No summons or registered cover was ever served upon the wife i.e. defendant No.2. It is only a day prior to filing of the application under Order IX Rule 13 CPC that she received a telephone call from Head Constable Major Singh on the mobile phone of her brother asking her to



collect the goods lying in the street after the Court officials handed-over vacant possession to the decree-holder.

5. Application was contested by the plaintiff/petitioner. It was claimed that defendant No.2 was properly served and having failed to appear despite service, she was rightly proceeded against *ex parte*. Trial Court framed the following issues in the application under Order IX Rule 13 CPC :

- “1. Whether the exparte judgment and decree dated 03.10.2022 in CS no. 5551/2021 passed by Sh Sumit Garg the then CJJD Ludhiana is liable to be set aside on the grounds mentioned in the application by the applicant?OPA
2. Whether present application for setting aside the judgment and decree dated 03.10.2022 in CS no. 5551/2021 passed by Sh Sumit Garg the then CJJD Ludhiana under Order 9 Rule 13 is not maintainable?OPR
3. Whether the applicant (respondent no. 2) has no locus standi to file the present application?OPR
4. Whether the applicant has no come to the court with clean hands and suppressed the material facts from the court? OPR
5. Whether the present application is bad for misjoinder and non joinder of necessary parties?OPR
6. Relief.”

6. Both the parties led their respective evidence. Trial Court after analysing the evidence threadbare came to the conclusion that from the records of the case, it is evident that the summons were received by defendant No.1 on behalf of defendant No.2. She was never informed by her husband regarding any summons received by him on her behalf.



Sukhminder Singh, plaintiff while appearing as RW-1 admitted that applicant Ramandeep Kaur was residing in the same house wherein defendant No.1 was served. He admitted that even at the time of execution of warrant of possession she was not present at the house. Her luggage was left on the road. Defendant No.1 husband also filed separate application seeking setting aside of *ex parte* decree. While appearing in the witness box he stated that he received summons from the Court twice. When he confronted his father about the court case, his father told him that the case was for transferring of property in his name and he need not appear in the Court. Trial Court found that from the conduct of Lovepreet Singh i.e. the son of the petitioner/plaintiff, it is evident that there was active collusion between father and son to get rid of applicant/wife. Civil Judge thus allowed the application filed under Order IX Rule 13 CPC and ordered restoration of possession to the respondent No.1.

7. Counsel for the petitioner while assailing the impugned order whereby *ex parte* judgment and decree has been set aside submits that the respondents were proceeded *ex parte* after they failed to appear despite service. An attempt has been made by the respondent/daughter-in-law to harass the petitioner who is a senior citizen. Civil Judge erred in law in allowing the application filed by the respondent/daughter-in-law without appreciating the evidence on record that demonstrates that respondent No.1 was served.



8. Per contra, counsel representing respondent No.1 submits that at no point of time, the applicant/respondent No.1 was served. In fact, process of law has been abused by father and son to divest indigent daughter-in-law of her right to residence in the matrimonial house. Mr. Gurcharan Dass submits that from the record, it is evident that the summons were received by defendant No.1 in the suit on behalf of defendant No.2. The same was witnessed by the plaintiff. The plaintiff and defendant No.1 evidently acted in cahoots to abuse process of law. He thus submits that the present petition needs to be dismissed with exemplary costs.

9. I have heard counsel for the parties and have carefully gone through records of the case.

10. Order IX of the Code of Civil Procedure, 1908 deals with appearance of parties and consequence of non-appearance. Order IX Rule 6 CPC provides as under :

“6. Procedure when only plaintiff appears.—(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

[(a) When summons duly served.—if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte;]

(b) When summons not duly served.—if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time.—if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the



suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement."

11. Order IX Rule 6 CPC thus provides that the Court may make order for hearing the suit *ex parte* only when it is proved that the summons have been duly served. As per records of the present case, defendant No.2 was served through defendant No.1. The same was witnessed by the plaintiff by putting his thumb-impression. Admittedly, defendant No.2 was residing in the same house wherein the plaintiff and defendant No.1 were residing. Defendant No.2 appeared in the witness-box in the proceedings under Order IX Rule 13 of the Code of Civil Procedure wherein she specifically testified that she was never informed by defendant No.1. The fact that the husband and wife i.e. defendants No.1 and 2, respectively, filed separate applications praying for setting aside of *ex parte* decree, shows that the both are not together. The same has been rightly noticed by the Trial Court. Defendant No.1 filed application claiming that he was never served in the suit. However, while appearing in support of the application, he took completely opposite stand. He claimed that he was fully aware of the civil suit filed by his father wherein he sought vacation of the house. Not only this, he also claimed that his wife was also in the knowledge of the *lis*. While in application, he pleaded that the service report was procured by his father i.e. the plaintiff by unlawful means but while giving ocular evidence, he stated



that he discussed the issue with his father about the *lis* and his father assured him that the suit was filed to transfer the property in his name and thus he opted not to appear.

12. In the considered opinion of this Court, the statement made by defendant No.1 in support of his application, was nothing but an attempt to create a false evidence that defendant No.2 i.e. the wife was in the knowledge of the *lis*. Defendant No.1 has proved to be untrustworthy. Thus, inference can be drawn that service effected on defendant No.2 through defendant No.1 was nothing but a mere eye-wash to hoodwink the process of the Court. Not only the testimony of defendant No.2 has gone un rebutted rather it has been proved on record that father and son i.e. the plaintiff and defendant No.1 acted in cahoots to oust defendant No.2 from the residential house. Thus, no fault can be found with the findings recorded by the Trial Court to the effect that defendant No.2 was indeed never served and was proceed *ex parte* wrongly. *Ex parte* judgment and decree has been rightly set aside by the Trial Court allowing the application filed by respondent No.1 under Order IX Rule 13 CPC.

13. This Court is further of the view that the manner in which the petitioner as well as his son have managed to abuse the process of law to procure *ex parte* decree and succeeded in throwing respondent No.1 on road, needs to be dealt with heavy hands. The plight of the lady with a small child whose belongings were thrown out of the house that too with the aid of Court and process of law can be well imagined. Trial Court has rightly



granted restitution to her. Respondent No.1 was dispossessed and her belongings were thrown out of the house on the road on 22nd/23rd of May, 2023. The possession was ordered to be restored only on 18th of September, 2023. The present petition is thus ordered to be dismissed with costs of Rs.50,000/- to be paid by the petitioner to respondent No.1 before the Trial Court on the next date of hearing.

14. Ordered accordingly.

September 05, 2024
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes