



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR-6818-2019**  
**Date of Decision: 22.07.2024**

**PRIMESH KALIA @ PARVESH KALIA**  
**....Petitioner**

**VERSUS**

**OM PARKASH GOYAL AND ANR**  
**....Respondents**

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Sunil Chadha, Senior Advocate with  
Mr. Tara Dutt, Advocate,  
Mr. Amandeep Singh, Advocate,  
Mr. Nitish Garg, Advocate and  
Mr. Arshpreet Singh, Advocate  
for the petitioner.

Mr. Amit Jain, Senior Advocate with  
Mr. Parit Aggarwal, Advocate  
for the respondent No.1.

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**HARKESH MANUJA, J. (Oral)**

1. By way of present petition, challenge has been laid to an order dated 10.07.2019 passed by the Court of learned Civil Judge (Junior Division), Chandigarh whereby, the evidence of the petitioner-defendant was closed by Court order in an application filed at his instance invoking Order 9 Rule 13 CPC.

2. In the present case, based on the agreement to sell dated 15.08.1990, the respondent-plaintiff filed Civil Suit No.236 of 1995



titled as ‘*Om Parkash Goyal vs. Ram Parkash Kalia*’ seeking specific performance of the same against the petitioner-defendant wherein he was proceeded against *ex parte* on 20.12.1996. The suit was decreed *ex parte* in favour of respondent-plaintiff vide judgment and decree dated 11.03.1997 followed by sale deed in his favour in executed proceedings. Later, an application dated 18.09.2017 came to be filed at the instance of the legal heirs of the vendee-purchaser/petitioners invoking Order 9 Rule 13 CPC seeking setting aside of the *ex parte* judgment and decree dated 11.03.1997. The said application came to be dismissed in default vide order dated 26.07.2018. The prayer for restoration of the aforementioned application under Order 9 Rule 13 CPC came to be allowed by the trial Court on 01.04.2019 while granting two opportunities to the petitioner-applicant to lead evidence in support thereof. Later, vide order dated 10.07.2019, the evidence of the applicant-defendant came to be closed. Some of the relevant orders dated 01.04.2019, 18.04.2019 and 27.05.2019 are reproduced hereunder:-

*“Present: Sh. Amit Sharma, counsel for applicant/ respondent.  
Ms. Mamta B. Jain, counsel for respondent/ plaintiff.*

*Arguments heard on the application for the restoration of the case. In the application, it has been stated by counsel for the applicant that the main petition under Order 9 Rule 13 CPC filed by Ram Parkash was dismissed in default 26.07.2018 due to non-appearance of the plaintiff. It has been stated that the case was fixed for 26.07.2018 but instead of the same, counsel for the applicant had noted down the said date as 27.07.2018. It has been stated that the case was adjourned for 16.07.2018 case to 26.07.2018 by the court but counsel for the applicant had wrongly noted down the same as 27.07.2018. It has been stated that the absence of the applicant from the court was not intentional and the present main petition under Order 9 Rule 13 CPC be restored.*



*In reply, it has been stated by the respondent Om Parkash that the absence of the applicant from the court was intentional as none had appeared in the court on 16.07.2018 as well. It has been stated that the present application has been filed just to harass the respondent and even the applicant under Order 9 Rule 13 CPC is an outcome of fraud. Therefore, it has been prayed that the present application is also liable to be dismissed with costs.*

*As per the file, it is clear that the counsel for the applicant has placed on record the photocopy of the diary of his office wherein it has been mentioned that the present case was noted down by counsel for the applicant for 27.07.2018 whereas the case was dismissed in default on 26.07.2018. It has been argued that the absence of the applicant from the court intentional. On the other hand, counsel for the respondent has stated that the present application be dismissed as there is no ground made out to restore the same. Keeping in view the documents placed on record by the counsel for the applicant, it is clear that the counsel had noted down a wrong date and therefore, due to the mistake of counsel, the applicant must not suffer. Hence, the present application for restoration is allowed and the present petition under Order 9 Rule 13 CPC is ordered to be restored to its original number subject to payment of Rs.3000/- costs. Now to come up on 18.04.2019 for payment of costs and for evidence of the applicant. It is made clear that now only two opportunities shall be granted to the applicant for leading further evidence.*

*Dated: 01.04.2019*

*(Gurkiran Singh)  
CJ(JD)/CHD/UID No.PB412*

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*Present: Sh. Amit Sharma, counsel for applicant/respondent.  
Ms. Mamta B.Jain, counsel for respondent/plaintiff.*

*Today Aw Manjit Singh concerned official of Estate Office is present for evidence but his evidence could not recorded on the request of counsel for applicant. Thereafter, Avjit Mishra, Assistant Manager, Central Bank of India, Sector-37/C, Chandigarh suffered statement that he has not brought the summoned record. He stated that he needs 15-20 days time be granted and he undertakes to appear on the next date of hearing along with record. In view of the said statement, PW Manjit Singh and Avjit Mishra be bound down for 27.05.2019 along with summoned records.*

*Dated: 18.04.2019*

*(Manu Mittu)  
CJ(JD)/CHD/UID No.PB383"*

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*Present: Sh. Amit Sharma, counsel for applicant/respondent.  
Ms. Mamta B. Jain, counsel for respondent/ plaintiff.*

*Costs of Rs.3000/- which was imposed upon the applicant is paid today as per order dated 01.04.2019.*

*No AW is present. Counsel for applicant requested for an adjournment whereas on the other hand, counsel for respondent vehemently opposed the adjournment on the ground that the*



*applicant has already availed two effective opportunities as per direction of the court vide order 01.04.2019. In this regard, Counsel for applicant submitted that the work was suspended on 18.04.2019. He also produced the resolution dated 18.04.2019 as per which no work day was observed on 18.04.2019.*

*Therefore, considering the resolution and the contentions of parties. This court hereby deemed it appropriate that one more opportunity is required to be given to the applicant for concluding evidence. It is specially directed that it shall be the last opportunity for concluding evidence. Now to come up on 10.07.2019 for applicant evidence. Two witnesses which were summoned by respondent was also present today. Both these witnesses are discharged for today and bound down for date fixed. Respondent if wants to summon any other witness then he is at liberty to get the summon issued at his own responsibility.*

*Dated: 27.05.2019*

*(Sanjay)*

*CJ(JD)/CHD/VID No. HR0391 ”*

3. Impugning the order dated 10.07.2019, learned Senior counsel appearing on behalf of the petitioner submits that though vide order dated 01.04.2019, two opportunities were granted to the petitioner-applicant to lead evidence in support of his application under Order 9 Rule 13 CPC, however, on 18.04.2019, the concerned official did not bring the relevant record whereas on 27.05.2019, on account of work been suspended by the local Bar, the evidence could not be recorded and the matter was adjourned to 11.07.2019. On the said date, the applicant being abroad could not appear as a witness thereby resulting into closure of his evidence by Court order. Learned counsel, thus, submits that non-recording of evidence on two opportunities was neither intentional nor willful on the part of the petitioner but was for *bona fide* reasons beyond his control. He further submits that in case, one last opportunity is granted in favour of the petitioner-applicant and that too at his own risk and

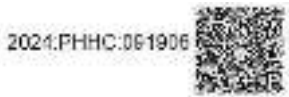


responsibility, he would conclude his entire evidence and, thus, prays for setting aside of the impugned order.

4. On the other hand, learned Senior counsel appearing on behalf of the respondent-plaintiff submits that the petitioner-applicant has been delaying the disposal of their own application filed under Order 9 Rule 13 CPC for one reason or the other, just to keep the lis alive between the parties and to put pressure upon them. He also points out that suit for possession by way of specific performance qua the property in question based on agreement to sell dated 15.08.1990 was filed on 17.07.1995 which was decreed in favour of respondent-plaintiff on 11.03.1997 whereas application for setting aside of *ex parte* judgment and decree was filed on 18.09.2017 i.e. after a period of more than 20 years and that too with incorrect averments made therein and, thus, the petitioner does not deserve the concession of this Court regarding grant of opportunity to lead evidence.

5. I have heard learned counsel for the parties and gone through the paper-book.

6. Though apparently and conclusively, the petitioner-applicant has been negligent through out in pursuing the present litigation, having filed application for seeking setting aside of the *ex parte* judgment and decree dated 11.03.1997 on 18.09.2017 i.e. after a period of more than 20 years and even thereafter having got it dismissed in default, yet purely in the interest of justice so as to afford an opportunity to the petitioner-defendant so as to put forth his cause



of non-appearance and to enable him to lead evidence in support thereof, rather than adopting a hypertechnical approach taking a pragmatic view of the matter, the impugned order dated 10.07.2019 passed by the trial Court is set aside and the petitioner is afforded one last opportunity to conclude his entire evidence including oral as well as documentary at his own risk and responsibility on the date fixed i.e. 05.08.2024, subject to payment of costs of Rs.2 lakhs to be tendered in favour of respondent-plaintiff on the said date.

7. Considering the fact that the petitioner is a non-resident Indian and is permanently living abroad, he himself is permitted to appear as witness through video conferencing, however, he would be responsible for all kinds of technical assistance in this regard, including the required equipments, apparatus and the internet connection at his end and would not raise any plea regarding any kind of technical glitch for raising it as a ground for seeking another opportunity.

8. Disposed of.

9. Pending application(s), if any, shall also stand disposed of.

July 22, 2024

Sangeeta

(HARKESH MANUJA)

JUDGE

Whether reasoned/speaking:

Whether reportable:

Yes/No

Yes/No