

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

118

CR-7080-2023 (O&M)

Date of Decision : 19.01.2024

MADHU BALA

.... Petitioner

VERSUS

NAND KISHORE & ORS.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Dr. Payal Mehta, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. Present revision petition has been preferred challenging the orders dated 25.07.2023 (Annexure P-1) and 20.10.2022 dismissing the application filed by the petitioner under Order 9 Rule 13 CPC.

2. Learned counsel for the petitioner would contend that the in-laws of the petitioner filed the present suit for mandatory injunction along with the consequential relief of permanent injunction against the present petitioner and her husband. It is the contention of the learned counsel for the petitioner that the petitioner in order to maintain cordial relations with her husband did not appear before the Trial Court and her husband was defending the suit and hence the application has erroneously been dismissed by both the Courts.

3. Notice of motion.

4. Mr. Raghav Sharma, Advocate appears and accepts notice on behalf of respondent No.1. Learned counsel for respondent No.1 has contended that in the suit filed by the in-laws, the petitioner herein had

initially appeared and had also filed her written statement but subsequently she stopped appearing in the matter after the framing of the issues. It is further the contention that there is no cogent reason forthcoming for her non-appearance and hence there was no ground to allow the application under Order 9 Rule 13 CPC. It is further the contention that there is a delay of 6 years without there being any application for condonation of delay.

4. Heard.

5. In the present case a civil suit was preferred by respondent No.1 and his wife (who has since expired) wherein the petitioner and her husband were impleaded as defendants. The suit was for mandatory injunction along with the consequential relief of permanent injunction. It was pleaded by the plaintiffs therein that they were owners of the house on the basis of the sale deed and that the present petitioner and her husband were allowed to reside in the house as licensee from 01.01.2008, however, they indulged in bad habits and used to beat the plaintiffs repeatedly. Hence, the plaintiffs instituted the suit and sought directions that the defendants be directed to hand over possession of the house. In the suit defendant No.1 i.e. husband of the petitioner filed a separate written statement and appeared through a separate counsel wherein allegations were leveled against the petitioner herein and it was further averred that the petitioner-wife had been threatening his parents and him that she would involve them in false dowry cases. The petitioner herein, who was arrayed as defendant No.2, filed her separate written statement raising preliminary objection of maintainability, cause of action, locus standi, mis-joinder and non-joinder of necessary parties and concealment. On merits it was averred that she was married with

defendant No.1 on 08.10.2008 and after marriage the plaintiffs and defendant No.1 started demanding dowry from her and they (the plaintiffs) insisted that defendant No.1 should beat her. Subsequent to the framing of the issues, the present petitioner stopped appearing before the Court and she was accordingly proceeded against ex parte vide order dated 28.07.2016. The present application for setting aside the ex parte order was filed on 13.05.2022 wherein it was averred that defendant No.1 i.e. husband of the petitioner had got her proceeded ex parte in collusion with the plaintiffs. It is further averred that the husband of the petitioner herein on the ground of cordial relationship had allured her that the suit would be withdrawn by the plaintiffs and a compromise would be effected between them and hence she stopped appearing in the matter. The said application was dismissed by the Trial Court vide order dated 20.10.2022. Aggrieved by the said order an appeal was preferred which was also dismissed vide order dated 25.07.2023. The argument of the learned counsel for the petitioner that she was misled by her husband cannot be accepted in view of the fact that there is nothing on the record to fortify the argument raised by the learned counsel. It is nothing but a bald statement made in the application filed under Order 9 rule 13 CPC which had been filed after a delay of 6 years. It is rather unbelievable that the present petitioner who appeared in the Court and filed written statement and had specifically taken a stand making allegations against her husband, would get allured by the husband and then stopped appearing before the Court and did not even bother to find out the outcome of the case.

6. In view of the above, I do not find any merit in the present petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.01.2024

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO*