

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.7579 of 2023 (O&M)

Date of Decision: 22.02.2024

Surender Kumar

...Revisionist-Petitioner

Versus

Smt. Kela Devi

...Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. M.S. Kathuria, Advocate appearing for
Mr. Virender Soni, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.

By filing the instant revision-petition under Article 227 of the Constitution of India, the petitioner-defendant (here-in-after to be referred as 'the defendant') has laid challenge to the order (Annexure P-5) handed down by learned Civil Judge (Junior Division), Rohtak (for short 'the trial Court') on 03.10.2023, whereby ***Application No.251 of 2023*** (Annexure P-4) moved by him under Order 9 Rule 13 read with Section 151 CPC with the prayer to set-aside the *ex-parte* order dated 05.09.2018 (Annexure P-2) and the *ex-parte* judgment and decree dated 01.11.2022 (Annexure P-3) as passed in the ***Civil Suit No.817 of 2018***, has been dismissed and he has also assailed the judgment (Annexure P-7) passed by learned Additional District Judge, Rohtak (for short 'the Appellate Court') on 20.11.2023, dismissing ***Civil Appeal No.222 of 2023***, filed by him against order Annexure P-5.

2. I have heard learned counsel for the petitioner-defendant in the present revision-petition, at the preliminary stage and have also perused the file carefully.

3. Learned counsel for the defendant contends that the defendant could not move application Annexure P-4 within the prescribed period of limitation because he is an old ailing person, having limited means and at that time, he did not have sufficient funds to do so and therefore, he should have been given the opportunity to contest the above-referred Suit and in these circumstances, it becomes explicit that the impugned orders and the judgments, as passed by both the Courts below, are not legally sustainable and hence, the same deserve to be set-aside.

4. However, the afore-raised contention is not tenable because the respondent-plaintiff (here-in-after to be referred as 'the plaintiff') filed the above-said Suit against the defendant for seeking a decree for recovery of Rs.01 lac, along-with interest thereon. Annexure P-2 is the order passed by the trial Court on 05.09.2018 qua proceeding *ex-parte* against the defendant while observing that he was absent despite having been duly served for that day. Then, Annexure P-3 consists of the copies of the judgment and decree passed by the trial Court in the afore-mentioned Suit on 01.11.2022. In para No.1(d) in the application Annexure P-4, the defendant has averred that he came to know about the above-referred *ex-parte* judgment and decree on 22.05.2023, when he appeared in the Court in the execution proceedings but it is pertinent to point it out here that he had filed this application on 11.09.2023 and even if the prescribed period of limitation, i.e 30 days, for

filing such like application, is computed from 22.05.2023, even then the fact remains that the application under reference was explicitly time-barred and concededly, the defendant did not move any application there-with, for seeking condonation of the delay in filing the same.

5. To add to it, though, the defendant has pleaded that he was not having sufficient funds to file application Annexure P-4, well in time but it is again worth-while to mention here that had he made any sincere efforts, he would certainly have come to know about the remedy of seeking free legal-aid for this purpose, by approaching the Competent Authority.

6. As a sequel to the fore-going discussion, it follows that the impugned orders and judgments, as passed by both the Courts below, do not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the revision-petition in hand, being *sans* any merit, stands dismissed accordingly.

22.02.2024
pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No