

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-657-2024
Reserved on : 05.02.2024
Date of decision : 13.02.2024

Karnail Singh (since deceased) through LR ... Petitioner(s)
Versus
Gurnam Kaur (since deceased) through LR & Others ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Nitin Verma, Advocate for the petitioner.

ALKA SARIN, J.

1. The present civil revision petition has been preferred under Article 227 of the Constitution of India challenging the impugned order dated 09.01.2019 (Annexure P-4) passed by the Trial Court and the impugned order dated 01.11.2023 (Annexure P-5) passed by the First Appellate Court whereby the application filed by the defendant-petitioner under Order 9 Rule 3 read with Order 9 Rule 13 CPC has been dismissed.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 and 2 filed a suit for possession by way of partition of gair mumkin abadi land fully detailed in the head note of the plaint. Notice of the suit as well as stay application was issued to the defendants including the defendant-petitioner. On 13.12.2011 the defendant-petitioner and some other defendants appeared in Court and their presence was recorded with their signatures/thumb impressions on the zimni order sheet. Thereafter the

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defendant-petitioner was proceeded against ex-parte and subsequently an application for setting aside the ex-parte proceedings against the defendant-petitioner was allowed on 09.08.2012. On 18.10.2014 the defendant-petitioner failed to appear and was again proceeded against ex-parte. On 13.04.2015 the suit was decreed by way of ex-parte judgment and decree dated 13.04.2015. On 26.10.2018 the defendant-petitioner filed an application under Order 9 Rule 3 read with Order 9 Rule 13 CPC for setting aside the order dated 18.10.2014 and the ex-parte judgement and decree dated 13.04.2015. The said application was dismissed by the Trial Court vide impugned order dated 09.01.2019 (Annexure P-4). The appeal of the defendant-petitioner against the said order was dismissed by the First Appellate Court vide impugned order dated 01.11.2023 (Annexure P-5). Hence, the present revision petition.

3. The learned counsel for the defendant-petitioner has vehemently contended that vide the ex-parte judgement and decree dated 13.04.2015 the defendant-petitioner has been condemned unheard. It is further contended that the defendant-petitioner had engaged a counsel and because of the lapse on the part of the counsel in not appearing before the Trial Court the defendant-petitioner is the ultimate sufferer.

4. I have heard the learned counsel for the defendant-petitioner.

5. In the present case the defendant-petitioner had appeared in person before the Trial Court on 13.12.2011. On the next date the defendant-petitioner did not appear either in person or through counsel before the Trial Court and was proceeded against ex-parte. On 09.08.2012 the ex-parte order against the defendant-petitioner was recalled after he moved an application

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through counsel. A written statement dated 17.04.2013 was filed by the defendant-petitioner through counsel however thereafter there was no appearance put on his behalf and he was again proceeded against ex-parte on 18.10.2014. After recording the ex-parte evidence, the Trial Court decreed the suit vide judgement and decree dated 13.04.2015. After almost 3½ years, on 26.10.2018, the defendant-petitioner filed the application under Order 9 Rule 3 read with Order 9 Rule 13 CPC for setting aside the order dated 18.10.2014 and the ex-parte judgement and decree dated 13.04.2015 which application stands dismissed. Both the Courts have found that the application was barred by 1000 days and there was no explanation forthcoming for this inordinate delay. The Trial Court held that *“Perusal of the file shows there is no corroboration to the defendant/applicant version regarding the inordinate delay of 1000 days. The mere unintentional absence can be occasional, but not continued for about 1000 days, more especially when the applicant has duly been served by summons and was represented by the counsel”*. The First Appellate Court while affirming the order passed by the Trial Court also held that *“Meaning thereby that defendant No.1 entered appearance on 13.12.2011. Having appeared in person on such date and his appearance having been recorded on the margin of the zimni order sheet of 13.12.2011, it does not lie in the mouth of defendant No.1 Karnail Singh/petitioner under Order 9 Rule 13 of the CPC, to say that no proper service was effected upon him. In fact he did not have any such case that he was not properly served. In fact he admitted the fact that he had appeared before the court on 13.12.2011. In such circumstances, there would be no escape to the conclusion that it is the first part of Article 123 of the Limitation Act which*

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would be applicable. The date from which limitation started running was the date of decree i.e. 13.4.2015 and not from the date of knowledge. Accordingly, in this case, period of limitation for filing petition under Order 9 Rule 13 of CPC was 30 days from the date of judgment and decree dated 13.4.2015, whereas the petition was filed on 26.10.2018. No application under Section 5 of the Limitation Act was ever filed by the petitioner”.

6. Learned counsel for the defendant-petitioner has not been able to convince this Court that the application filed under Order 9 Rule 3 read with Order 9 Rule 13 CPC was within time. Having put in appearance in person before the Trial Court the limitation of thirty days would start from the date of the judgement and decree. Learned counsel has also not put forth any cogent reasons explaining the delay of 1000 days or why any application for condonation of delay was not filed. No other point was argued.

7. In view of the above, there is no illegality or irregularity in the exercise of jurisdiction by the Courts below. The impugned orders are legal and sustainable. I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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