



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

114

CR-7802-2023**Date of Decision: 12.09.2024**

Ranjit Kaur

...Petitioner

Versus

R.M.V. Enterprises (Regd.) and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Ms. Amandeep Kaur, Advocate, for the petitioner.

VIKAS SURI, J. (ORAL)

1. Challenge through this petition under Article 227 of the Constitution of India is to the orders dated 01.11.2021 (Annexure P-6) and 08.09.2023 (Annexure P-8) passed by learned Civil Judge (Junior Division), Jagraon, whereby the application for setting aside the *ex parte* judgment and decree dated 26.02.2015 was dismissed in default and thereafter, the application for restoration of the application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC") was also dismissed, respectively.

2. Learned counsel for the petitioner submits that the petitioner is defendant No.1 in the suit for recovery of Rs.11,41,000/-. Initially, the defendants did not put in appearance despite service and were accordingly proceeded against *ex parte* vide order dated 19.09.2013 (Annexure P-2). The suit was decreed in favour of the plaintiff-respondent M/s R.M.V. Enterprises Jagraon (Regd.), vide *ex parte* judgment and decree dated 26.02.2015 (Annexure P-3). Thereafter, the petitioner moved an application under Order 9 Rule 13 read with Section 151 CPC for setting aside the



aforesaid *ex parte* judgment and decree dated 26.02.2015. Notice of the application was issued but before the decision of the same, learned counsel for the petitioner pleaded no instructions on 04.10.2021. Accordingly, notice was issued to the petitioner-applicant vide order dated 04.10.2021 (Annexure P-5) but none appeared for her and the application was dismissed in default vide order dated 01.11.2021. Thereafter, the petitioner moved an application seeking restoration of the application under Order 9 Rule 13 read with Section 151 CPC, which application stands dismissed vide order dated 08.09.2023.

2.1 Aggrieved by the said orders, the petitioner has challenged the same by way of the present petition.

3. Heard learned counsel for the petitioner and perused the record with her able assistance.

4. The Court below, after examining the record and noticing the conduct of the petitioner, made the following observations while dismissing the application seeking restoration of application under Order 9 Rule 13 CPC. The operative part of the order dated 08.09.2023 reads thus:-

“3. Heard. The judgment and decree has been passed by the court on 26.02.2015. Then the execution was filed by the DH on 30.04.2015 and is pending for the last more than 8 years. Earlier the JD has filed an application for setting aside *ex parte* judgment and decree dated 26.02.2015 which was dismissed on 02.08.2018 by the court of Ms Sherryl Sohi, the then Id. CJJD, Jagraon as despite imposition of cost the applicant/JD did not appear before the court to tender evidence. Then, an application for restoration of the application for setting aside *ex parte* judgment and decree dated 26.02.2015 was filed which was allowed on 29.04.2019 and only two effective



opportunities were given to the JD to conclude evidence. But despite opportunities the applicant/JD did not pay cost and did not appear before the court and the application for restoration of setting aside ex parte judgment and decree dated 26.02.2015 was dismissed in default on 01.11.2021 which has been challenged vide the present application. The applicant in the present application has herself admitted that she got the certified copy of the order on 06.05.2022. The present application for restoration has been filed after the issuance of notice u/o 21 rule 66 CPC in the execution application bearing no. 72/2015 on 09.08.2023 i.e. after one year and three months of obtaining the certified copy of order under challenge. The applicant in her application has stated that she got operated for gall bladder removal through major surgery, so the delay has been caused in filing the present application. But the photocopy of the discharge card placed on record by the applicant herself shows that she was operated on 26.11.2019 and was discharged on 28.11.2019 i.e. 5 months prior to the date of moving an application for obtaining the certified copy of order dated 01.11.2021 moved by the applicant on 27.04.2022 which shows that the applicant wants to delay the execution of the judgment on one pretext or the other. No record of the applicant being effected by COVID or any medication has been placed on record by the applicant. From the facts and circumstances of the case and from the follow up of the applications moved by the applicant, it is clear that the applicant just wants to linger on the execution of the judgment and decree dated 26.02.2015 which is pending for the last more than 8 years. The DH has not enjoyed the fruits of his decree for the last more than 8 years. So this court does not find any merits in the present application and the same stands dismissed. The application stands disposed of and be consigned to judicial record room after necessary compliance.”



5. It is not disputed that earlier also, the same application for setting aside the *ex parte* judgment and decree dated 26.02.2015, had been dismissed in default vide order dated 02.08.2018. On an application filed by the petitioner for restoration, which was allowed vide order dated 29.04.2019, the main application was restored to its original number. As noticed in the impugned order, after restoring the main application, two effective opportunities were granted to the petitioner to conclude evidence but despite having been afforded the said opportunities, the petitioner neither paid the costs nor appeared before the Court. In view of the same, the application for setting aside the *ex parte* judgment and decree dated 26.02.2015 was once again dismissed in default vide order dated 01.11.2021. The petitioner thereafter filed the present application for restoration of the said application under Order 9 Rule 13 CPC, on 09.08.2023. It is further noticed that the reason given by the petitioner for the delay in filing the application for restoration, that she got operated for removal of her gallbladder, was found incorrect as a matter of fact, as the said operation had taken place five months prior to moving of the application for obtaining certified copy of the order of dismissal dated 01.11.2021, as per the record. The petitioner was operated on 26.11.2019 and was discharged on 28.11.2019, whereas the application for obtaining certified copy of order dated 01.11.2021, was actually filed on 27.04.2022 while the application for restoration was filed much later on 09.08.2023.

6. In view of the aforesaid, the Court below came to the conclusion that the petitioner only wants to linger on the execution of the judgment and decree dated 26.02.2015, which is now pending for last more



than nine years. During the course of arguments, nothing could be pointed out from the record to dispel the findings recorded by the Court below. Hence, restoration of the application under Order 9 Rule 13 read with Section 151 CPC, which had already been dismissed in default twice, was rightly denied by the Court.

7. In the light of the above, this Court is of the considered view that the impugned orders do not suffer from any infirmity much less perversity that would warrant interference by this Court.

8. Resultantly, the present petition being bereft of merit, is dismissed in *limine*.

9. Pending applications, if any, also stand disposed of.

September 12, 2024
harish

(VIKAS SURI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No