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

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Date of decision:05.02.2025

SURESH KUMARI

...PETITIONER

VS.

SURINDER SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Wazir Singh, Advocate
for the petitioner.

Mr. Subhash Ahuja, Advocate &
Mr. Karan Veer Ahuja, Advocate
for the respondent.

SUVIR SEHGAL, J.

1. Petitioner-plaintiff has filed this revision petition under Article 227 of the Constitution of India for setting aside order dated 29.05.2024, Annexure P-8, passed by the learned Additional District Judge, Karnal.

2. Undisputed facts, leading to the filing of the petition, are that the plaintiff, who is a Commission Agent, filed a suit for recovery of Rs.2,62,900/- alongwith future interest. Despite being served, respondent/defendant did not put in appearance and was proceeded against ex parte vide order dated 30.03.2018 and an ex parte decree dated 06.10.2018, Annexure P-1, was passed against him. Plaintiff filed an execution petition, wherein again, the respondent was proceeded against ex parte on 16.03.2019. An application under Order 9 Rule 13 CPC was filed



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by the defendant on 07.01.2022, Annexure P-4, for setting aside the ex parte judgment and decree, which was rejected by the learned Trial Court by order dated 03.11.2023, Annexure P-5. Defendant filed a revision petition before this Court, which was rejected on 29.11.2023, Annexure P-6. An appeal was preferred by the defendant before the learned Additional District Judge, which has been accepted vide impugned order, Annexure P-8, and the matter has been remitted to the Trial Court to frame issue as to whether the defendant had sufficient cause to seek the setting aside of the ex parte judgment and decree. Appellate Court directed that after framing issue, both the parties be given opportunity to lead evidence and application, Annexure P-4, be decided afresh, on merits.

3. Placing reliance upon the judgment of the Supreme Court in **Fiza Developers & Inter-Trade Private Limited Vs. AMCI (India) Pvt. Ltd. and another (2009) 17 SCC 796** and a judgment of this Court in CR-6725-2011 titled as **Kali Ram Vs. Shanti and others** decided on 06.01.2015, Mr. Wazir Singh, counsel for the petitioner has urged that the learned Additional District Judge has erred in remanding the appeal and directing the Trial Court to frame issue while deciding an application for setting aside ex parte decree.

4. Per Contra, Mr. Subhash Ahuja, counsel for the respondent has referred to **Neelam Rani Vs. Gaurav Madaan and others 2023 (1) Law Herald 122**; **Anuraj Vs. M/s Sheel Buildcon Pvt. Ltd. and another 2010 (7) RCR (Civil) 475** and **Gurjeet Singh Vs. Jagtar Singh 2020 (1) PLR 372** to contend that the Court failed to record its satisfaction with regard to service



and that the defendant was well within his right to insist on framing of issue on the satisfaction of the Trial Court.

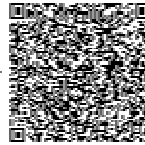
5. I have heard counsel for the parties and considered their respective submissions.

6. While discussing as to whether issues under Order 14 Rule 1 CPC should be framed in applications under Section 34 of the Arbitration and Conciliation Act, 1996, Supreme Court observed as under:-

“13. There is no doubt that framing of issues is necessary in every contested regular civil suit. Equally clear is the position that in proceedings which are intended to be summary in nature, issues are not framed. Proceedings for setting aside ex parte decrees, proceedings for restitution, proceedings for execution and proceedings for permission to sue as an indigent person, are illustrative of summary proceedings which are governed by the Code, where issues are not framed.

14. In a summary proceeding, the respondent is given an opportunity to file his objections or written statement. Thereafter, the court will permit the parties to file affidavits in proof of their respective stands, and if necessary permit cross examination by the other side, before hearing arguments. Framing of issues in such proceedings is not necessary. We hasten to add that when it is said issues are not necessary, it does not mean that evidence is not necessary.”

7. Holding that proceedings for setting aside ex parte decrees are summary in nature, Supreme Court has held that framing of issues in such proceedings is not necessary. Clarifying, Supreme Court has observed that



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this does not mean that evidence is not required to be led. The judgment of the Supreme Court in *Fiza Developers's case (supra)* was not brought to the notice of this Court in the judgments relied by counsel for the respondent. Therefore, the judgments would not come to the aid of the respondent. Findings recorded by the learned Additional District Judge in the impugned order are clearly contrary to the observations of the Supreme Court and cannot be sustained.

8. For the afore-going reasons, impugned order is set aside. Matter is remitted to the appellate court to decide the appeal afresh on the basis of the material produced before it. Appellate Court shall afford the parties an opportunity to adduce any additional material that they intend to rely upon.

9. Revision petition is disposed off.

10. Parties are directed to appear before the learned District Judge, Karnal, on 10.03.2025, who may decide the appeal himself or assign it to any other court of competent jurisdiction.

05.02.2025

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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No