

(2009) 08 P&H CK 0255

High Court Of Punjab And Haryana At Chandigarh

Case No: CM No. 21687-CII of 2008 and CR No. 6025 of 2008

Gurcharan Singh

APPELLANT

Vs

Surjit Singh and
Another

RESPONDENT

Date of Decision: Aug. 17, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 151

Hon'ble Judges: Ajay Kumar Mittal, J

Bench: Single Bench

Advocate: Ramesh Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

Ajay Kumar Mittal, J.

C.M. No. 21687-CII of 2008

1. This is an application u/s 151 of the CPC for condonation of 143 days" delay in refiling the revision petition. After hearing the learned counsel and perusing the application, the delay of 143 days in refiling the revision petition is condoned.

CM stands disposed of accordingly.

C.R. No. 6025 of 2008

2. In this revision petition, the defendant-petitioner has sought setting aside of the order dated 26.11.2007 passed by the lower appellate court upholding the order dated 2.8.2006 passed by the trial court dismissing the application filed by him under Order 9 Rule 13 read with Section 151 of the CPC for setting aside the ex parte decree dated 24.4.1996 passed in civil suit No. 1368 of 24.12.1993 titled as "Surjit Singh v. Swaranjit Singh etc.".

3. The lower appellate court while affirming the order of the trial court, in para 12 of its order, had recorded as under:-

12. Perusal of file shows that Swaranjit Singh was ordered to be proceeded against ex parte by the learned trial Court on 19.4.1996 due to non-appearance of the defendant. It stands proved on record that Ajaib Singh was attorney of Swaranjit Singh, who was also party to the suit and he also failed to put his appearance and was also ordered to be proceeded against ex parte and this Ajaib Singh has admitted in his reply that they were rightly proceeded against ex parte by the learned trial Court and they had got the knowledge with regard to the order passed by the learned trial Court. As per own case of the appellant, Swaranjit Singh died on 20.11.1996. Since in the suit Swaranjit Singh used to appear, engaged counsel and filed written statement and case was ordered to be fixed for the evidence of the plaintiff when Swaranjit Singh, since dead, was ordered to be proceeded against ex parte. Even though it is presumed that he was ill, he could have sent the present applicant or anybody else to contest the suit. Moreso, he also engaged a lawyer and the lawyer also failed to put his appearance. As far as the illness is concerned, there is nothing on the record to show that Swaranjit Singh (since dead) remained ill or was suffering from Cancer. Moreover, the present applicant has also not been able to show the date on which when and how they came to know with regard to the passing of ex parte judgment and decree against deceased Swaranjit Singh. Keeping in view the fact that Swaranjit Singh (since dead) had the knowledge of suit against him as he used to put his appearance, engaged a counsel and case was ordered to be fixed for evidence of the plaintiff and other defendant, who also used to appear and later on due to non-appearance of Swaranjit Singh and other defendants, the case was ordered to be proceeded against ex parte, as the learned counsel for the appellant has failed to show any sufficient ground or reason to set aside the order nor they are able to show as to how and when the applicant came to know about the passing of the ex parte judgment and decree against deceased, Swaranjit Singh. Hence no ground is made out to interfere in the findings recorded/rendered by the learned lower court.

In view of the aforesaid observations, no illegality or perversity could be shown by the learned counsel for the petitioner in the order passed by the trial court and affirmed, on appeal, by the lower appellate court which may warrant any interference of this Court in its revisional jurisdiction. Accordingly, there being no merit in the instant revision petition, the same is hereby dismissed.