

(2020-4)200 PLR 708

PUNJAB AND HARYANA HIGH COURT

*Before: Mr. Justice Sanjay Kumar.*

ESTATE OFFICER, HARYANA URBAN DEVELOPMENT AUTHORITY, (NOW, HSVP) KAITHAL and others – Petitioners,

*Versus*

RAM MURTI DEVI and others – Respondents.

CR-2071-2020

**Civil Procedure Code, 1908 (V of 1908) Order 9, Rule 2 - Appeal - Appellants did not deposit the costs imposed by way of an earlier order - Taking a serious view of these lapses, the Appellate Court dismissed the appeal as against respondent Nos.2, 3 and 6, by taking recourse to Order 9 Rule 2 CPC - Application seeking recall of the orders dismissed - Order of the Appellate Court, may prove to be fatal, given the fact that they were amongst the plaintiffs in whose favour the suit was partly decreed - In effect, the entire appeal would stand at risk, even if it is continued as against the other respondents - Further, the explanation set out by the appellants in their application demonstrated that the lapses on their part were not serious enough - Order set aside - Petition allowed.**

*Mr. Arvind Seth, for the petitioners. Mr. Sanjeev Kumar, for respondent Nos.1, 2 and 4 to 6, Mr. Rajesh Gaur, Addl. AG , Haryana, for respondent No.3.*

JUDGMENT (ORAL)

**Sanjay Kumar, J. -(20th August, 2020)** - This civil revision, filed under Article 227 of the Constitution of India, arises out of the orders dated 21.08.2019 (Annexure P-1) and 28.11.2019 (Annexure P-2) passed by the Appellate Court of the learned Additional District Judge, Kaithal. By the order dated 21.08.2019 (Annexure P-1), the Appellate Court dismissed Civil Appeal No.128 of 2019 as against respondent Nos.2, 3 and 6 therein, exercising power under Order 9 Rule 2 CPC. By the later order dated 28.11.2019 (Annexure P-2), the Appellate Court dismissed the application filed by the appellants to set aside the order dated 21.08.2019.

2. Notice of motion was ordered in this civil revision on 23.07.2020. Pursuant thereto, Mr. Sanjeev Kumar, learned counsel, appeared for respondent Nos.1, 2 and 4 to 6, while Mr. Rajesh Gaur, learned Additional Advocate General, Haryana, appeared for respondent No.3.

3. The subject appeal was filed by defendant Nos.1 to 3 in Civil Suit No.355 RBT/CIS 623 of 11.09.2018/28.04.2015 on the file of the learned Civil Judge (Senior Division), Kaithal, aggrieved by the judgment and decree dated 26.02.2019 passed therein. The said suit was filed by respondent Nos.1, 2 and 4 to 6 for a declaration and a consequential permanent injunction. By the judgment under appeal, the trial Court decreed the suit in part.

4. While so, the order dated 21.08.2019 (Annexure P-1) passed by the Appellate Court demonstrates that notices to respondent Nos.2, 3 and 6 in the appeal could not be issued for want of copies of the appeal and registered covers. It appears that the appellants also did not deposit the costs imposed by way of an earlier order. Taking a serious view of these lapses, the Appellate Court dismissed the appeal as against respondent Nos.2, 3 and 6, by taking recourse to Order 9 Rule 2 CPC.

5. Seeking recall of the said order, the appellants moved an application. Therein, they stated that there was no repeated default or delay on their part and set out facts in support thereof. However, the Appellate Court was of the opinion that the said application itself was belated and that no grounds were made out to extend any indulgence to the appellants. The Appellate Court noted that multiple opportunities are not required to be given to a party who commits an unjustified fault even once and dismissed the application, by way of

its order dated 28.11.2019 (Annexure P-2).

6. It is no doubt true that the Appellate Court would be entitled to exercise its discretion judiciously while dealing with the conduct and the bonafides of the parties before it. To that extent, there is no palpable error committed by the Appellate Court. However, it would always be desirable that a lis is decided on its own merits rather than being disposed of on technicalities. The absence of respondent Nos.2 and 3 in the appeal, pursuant to the order of the Appellate Court, may prove to be fatal, given the fact that they were amongst the plaintiffs in whose favour the suit was partly decreed. In effect, the entire appeal would stand at risk, even if it is continued as against the other respondents. Further, the explanation set out by the appellants in their application demonstrated that the lapses on their part were not serious enough to warrant the Appellate Court completely non-suiting them, as would be the ultimate effect. This Court is therefore of the considered opinion that the Appellate Court ought to have been more liberal towards the appellants and put them on suitable terms instead of holding against them.

7. The civil revision is accordingly allowed setting aside both the orders passed by the Appellate Court, viz., the order dated 21.08.2019 (Annexure P-1) and the order dated 28.11.2019 (Annexure P-2). The appeal shall stand restored as against all the respondents therein, subject to payment of costs of Rs.5,000/- by the appellants, viz., the petitioners in this revision, to the District Legal Services Authority, Kaithal. They shall also take necessary remedial measures for making good any shortcomings in effecting service of notices upon the respondents in the appeal within two weeks after the payment of costs. The Appellate Court shall thereafter hear the appeal on merits in due course and dispose of the same in accordance with law.

8. The civil revision is allowed to the extent indicated above.

In the circumstances, there shall be no order as to costs.

*R.M.S. – Petition allowed.*