



In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5594 of 2018

Date of Decision: 25.03.2025

Mohinder Singh (Since Deceased) through his Legal Representatives

... Petitioner(s)

Versus

Ashok Kumar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rakesh Chopra and Mr. Jashan Chopra, Advocates
for the petitioner(s).

Mr. Suneet Kumar, Advocate
for respondents No.1 to 4, 6 and 16.

Anil Kshetarpal, J.

1. The petitioners herein are the legal heirs of late Mohinder Singh who was defendant No.1 in a plaintiffs' suit for possession of the land measuring 57 kanals 17 marlas.

2. Late Mohinder Singh was proceeded against *ex parte* vide order dated 19.07.2010. Subsequently, he died on 07.12.2016. His legal heirs filed an application for permission to file the written statement which was dismissed by the Trial Court. The petitioners filed the revision petition which was disposed of with the following order:-

“Counsel for the petitioner would state that the present petition may be dismissed as withdrawn without prejudice to right of the petitioner (since deceased) represented by his LRs to file an appropriate application before the Court below for

setting aside ex parte proceedings.

Ordered accordingly.”

3. Subsequently, the petitioners filed an application under Order IX Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) to set aside the *ex parte* proceedings which was dismissed by the Trial Court on the ground that the previous order dismissing the application for permission to file the written statement shall operate as *res judicata*.

4. It is evident that the petitioners or their predecessor never filed an application under Order IX Rule 7 CPC. On the basis of wrong advice, they filed an application for permission to file the written statement which was dismissed. However, the petitioners’ revision petition was withdrawn as they wanted to file an application to set aside the *ex parte* proceedings. Now an application under Order IX Rule 7 CPC to set aside the *ex parte* proceedings has been filed which is required to be adjudicated by the Trial Court.

5. Keeping in view the aforesaid facts, the present revision petition is allowed and the order dated 27.07.2018 passed by the Trial Court is set aside with a direction to decide the application under Order IX Rule 7 CPC, in accordance with law.

(Anil Kshetarpal)
Judge

March 25, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No