

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****370****CR-3469-2024 (O&M)****Date of Decision : 23.01.2025**

M/S Creative Line International Pvt Ltd and AnotherPetitioners

VERSUS

Harpreet Kaur Anand and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gurcharan Dass, Advocate for the petitioners.

Mr. Anil Kumar Garg, Advocate for respondent Nos.1 to 3.

ALKA SARIN, J. (Oral)**CM-467-CII-2025**

1. This is an application under Section 151 of the Code of Civil Procedure, 1908 for preponing the date of hearing in the main case from 06.05.2025 to an early date.

2. Learned counsel appearing on behalf of respondent Nos.1 to 3 states that he has no objection if the present application is allowed.

3. For the reasons stated in the application, the same is allowed. With the consent of learned counsel for the parties, the main revision petition is taken on Board today itself.

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4. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 14.09.2022 (Annexure P-1) and 21.02.2024 (Annexure P-2).

5. The brief facts may be noticed which are relevant to the present *lis* are that the plaintiff-respondent Nos.1 to 3 filed a suit for recovery of Rs.40,24,926/- as principal amount alongwith interest on 09.08.2012. Written statement was filed by the defendant-petitioners herein. On 11.04.2017 the evidence was concluded by the plaintiff-respondent Nos.1 to 3. Thereafter, the defendant-petitioners failed to appear and were proceeded against *ex parte* vide order dated 21.08.2017 and *ex parte* judgment and decree came to be passed on 19.02.2018. Thereafter, the execution was filed. The defendant-petitioners subsequently filed an application on 03.10.2019 under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the *ex parte* judgment and decree dated 19.02.2018. Reply was filed to the said application. The said application itself was dismissed in default on 14.09.2022. An application for restoration of the said application was filed, which was also dismissed in default on 21.02.2024. Hence, the present revision petition.

6. Learned counsel for the defendant-petitioners would contend that the defendant-petitioners had engaged a counsel who had told them that they would not be required to be present. However, he did not appear and the application under Order IX Rule 13 CPC was dismissed and the application for restoration of the same was filed through a new counsel.

7. *Per contra* learned counsel for plaintiff-respondent Nos.1 to 3 has contended that the conduct of the defendant-petitioners needs to be seen inasmuch as till the time plaintiff-respondent Nos.1 to 3 concluded their evidence the defendant-petitioners were appearing and thereafter, instead of

leading their evidence, they stopped appearing and were proceeded against *ex parte* on 21.08.2017. The *ex parte* judgment and decree was passed on 19.02.2018. It is only when the execution was filed that an application under Order IX Rule 13 CPC was filed on 03.10.2019, which was also dismissed in default on 14.09.2022. Thereafter, an application for restoration of the application under Order IX Rule 13 CPC was filed, which was also dismissed in default on 21.02.2024. It has also been pointed out by learned counsel for the plaintiff-respondent Nos.1 to 3 that in the application under Order IX Rule 13 CPC, before it was dismissed in default, nine opportunities were taken by the defendant-petitioners for leading evidence.

8. Heard.

9. In the present case learned counsel for the defendant-petitioners has sought to give some sort of explanation for non-appearance of the defendant-petitioners on 14.09.2022. However, there is no explanation forthcoming for the absence of the counsel on 21.02.2024, who was stated to be a new counsel. The defendant-petitioners without doubt have been remiss not only on one occasion but on numerous occasions. The application under Order IX Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 19.02.2018 was filed on 03.10.2019. Thereafter, the matter remained pending as the defendant-petitioners herein kept on taking dates for leading evidence. Eventually on 14.09.2022, the application was dismissed in default. The application for restoration of the application was filed on 25.01.2023 through a new counsel, which was also dismissed in default vide order dated 21.02.2024 (Annexure P2). Though the conduct of the

defendant-petitioners is very telling, however, in order to do complete justice between the parties, this Court deems it appropriate to give one opportunity to the defendant-petitioners to pursue the application under Order IX Rule 13 CPC.

10. In view of the above, orders dated 04.10.2019 and 21.02.2024 are set aside. Consequently, the application under Order IX Rule 13 CPC is ordered to be restored. It is, however, made clear that the opportunity granted to the defendant-petitioners is subject to payment of Rs.60,000/- as costs out of which Rs.40,000/- would be payable to respondent Nos.1 to 3 and Rs.20,000/- would be deposited with the State Legal Services Authority, Punjab. The payment of costs would be a condition precedent. It is further clarified that in case of any default on the part of the defendant-petitioners in now pursuing the application under Order IX Rule 13 CPC, the present revision petition shall be deemed to have been dismissed. The Trial Court is requested not to grant any unnecessary adjournments. Pending applications, if any, also stand disposed off.

23.01.2025

jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO