



CR-432-2025

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

(133)

CR-432-2025

Date of Decision: - 23.01.2025

Neelam (since deceased) through LR and another**....Petitioners****Versus****Neeraj @ Neeru and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Nissim Aggarwal, Advocate, and
Mr. Tejas Bansal, Advocate,
for the petitioners.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 27.11.2018 (Annexure P-1) passed by the Additional District Judge, Kaithal, whereby the Civil Appeal No.CA/337/17 filed by the petitioners has been dismissed under Order 9 Rule 2 CPC against respondent No.5. Challenge is also to the impugned order dated 03.01.2025 (Annexure P-2) passed by the Additional District Judge, Kaithal.
2. Learned counsel for the petitioners has submitted that one opportunity be granted to the petitioners to serve respondent No.5 in the present case.



3. This Court has heard learned counsel for the petitioners and has perused the paper-book and finds that the impugned orders have been rightly passed and the present revision petition, being meritless, deserves to be dismissed for the reasons detailed hereinafter.

4. Respondent Nos.1 to 4 had filed a suit for separate possession by way of partition, in which, the petitioners were impleaded as defendants No.1 and 2. The sister-in-law of respondent No.1 i.e. Raj Rani was impleaded as defendant No.4 and was thus a co-defendant with the petitioners. The suit was decreed on 04.09.2017 and an appeal was filed against the said judgment by defendant No.1-petitioner No.1 and the said Raj Rani was impleaded as respondent No.5 in the said appeal. Notice of the said appeal was issued on 07.11.2017 and a perusal of the orders dated 27.07.2018 as well as 11.09.2018 would show that the notice could not be issued to respondent No.5-Raj Rani on account of non-filing of the copy of the appeal. On 27.11.2018, again it was observed by the 1st Appellate Court that notice could not be issued to respondent No.5 for want of copy of appeal and sufficient opportunities had been granted including two last opportunities and thus, the appeal against respondent No.5/Raj Rani was dismissed under Order 9 Rule 2 CPC.

5. Thereafter, on 14.02.2020 i.e. after a delay of more than 1 year and 2½ months from the date of passing of the order dated 27.11.2018, an application was filed for recalling the order dated 27.11.2018. The said application was opposed by respondents No.1 to 4



by filing a reply (Annexure P-11), in which it was stated that the application had been filed after a gap of 455 days and without there being any explanation for the said delay. It was further averred that the same had been filed only to prolong the appeal so that the present petitioners could delay the partition of the suit property. Vide order dated 03.01.2025, the said application was dismissed and it was observed by the 1st Appellate Court that the appeal was of the year 2017 and the application for recalling the earlier order had been filed after a gap of 455 days, which was unexplained. It was further observed that respondent No.5/Raj Rani had already expired and the said fact had not been disputed during the course of arguments and accordingly, the application was dismissed. A perusal of the memo of parties in the present case would show that respondent No.5 has been stated to be alive, although in the impugned order itself it has been mentioned that she has died.

6. From the above-said facts, it is apparent that the petitioners have been extremely callous in pursuing their appeal and in spite of having several opportunities including last opportunities, they did not supply the copy of the appeal for service of respondent No.5 and after the order dated 27.11.2018 had been passed, the application for recalling the said order was filed after a period of more than 1 year and 2½ months without there being any explanation for the same. Thus, it is apparent that the petitioners, as alleged by the respondents No.1 to 4 in the reply (Annexure P-11), are only trying to delay the culmination of the partition proceedings.

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7. Keeping in view the above-said facts and circumstances, the impugned orders are upheld and the present revision petition, being meritless, deserves to be dismissed and is accordingly dismissed.

January 23, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No