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

CR-4572-2025

Date of decision: 22.07.2025

Gurwinder Singh

...Petitioner

Versus

Naurang Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. J.S. Grewal, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 16.01.2024 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Fatehgarh Sahib, vide which an application under Order 9 Rule 13 CPC filed by the petitioner for setting aside the ex-parte judgment and decree dated 14.08.2019 has been dismissed. Challenge is also to the judgment dated 12.08.2024 (Annexure P-7) passed by the District Judge, Fatehgarh Sahib whereby the appeal of the petitioner against the order dated 16.01.2024 (Annexure P-5) has been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner be granted one opportunity to lead evidence in the proceedings under Order 9 Rule 13 CPC as in case, no such opportunity is granted to the



petitioner, then, the petitioner would suffer irreparable loss. It is submitted that the execution proceedings are now pending for 24.07.2025 and the same be stayed in the meanwhile.

3. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that the order dated 16.01.2024 (Annexure P-5) vide which the application under Order 9 Rule 13 CPC has been dismissed as well as judgment dated 12.08.2024 (Annexure P-7) vide which the same has been upheld in appeal, are in accordance with law and deserve to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

4. It is not in dispute that the respondent-plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 16.08.2016 regarding the suit property. The petitioner was proceeded against ex-parte vide order dated 30.09.2019 and the suit of the respondent-plaintiff was decreed vide judgment and decree dated 04.12.2019. Relevant portion of the said judgment and decree is reproduced hereinbelow:-

“Accordingly suit of the plaintiff is decreed and defendant is ordered to execute sale deed in favour of plaintiff within two months from today on the basis of agreement to sell dated 16.08.2016 Ex. P1 otherwise plaintiff has to adopt due process of law. It is further made clear that if defendant will not execute the sale deed within two months from the date of decree in favour of plaintiff from today, then plaintiff will have liberty to get sale deed executed through court. The defendant is also restrained from alienating the suit property. Decree-sheet be drawn accordingly. File be consigned to Judicial Record Room, Fatehgarh Sahib, after due compliance.”



*Pronounced:-
04.12.2019”*

5. The present petitioner had filed an application under Order 9 Rule 13 read with Section 151 CPC to which reply was also filed by the respondent-plaintiff. The trial Court, vide order dated 16.01.2024, dismissed the said application under Order 9 Rule 13 CPC by observing that the petitioner did not lead any evidence despite availing several opportunities since 20.03.2023 including last opportunity and that thereafter, the petitioner/applicant’s evidence was closed by order. It was further observed that there was no evidence produced by the present petitioner nor the present petitioner stepped into the witness box and thus, there was nothing on record to show that there was any merit in the application under Order 9 Rule 13 CPC and accordingly, the application under Order 9 Rule 13 CPC was dismissed.

6. The petitioner filed an appeal against the said order and the Appellate Court vide order dated 12.08.2024, dismissed the said appeal. Relevant portion of the said judgment is reproduced hereinbelow:-

“10. This court has considered the contentions made by the learned counsels for the parties.

11. Gurwinder Singh has filed the application under order 9 Rule 13 CPC read with section 151 CPC for setting the judgment and decree dated 04.12.2019 passed in civil suit No.418 dated 14.08.2019, titled Naurang Singh vs Gurwinder Singh passed by Dr. Gagandeep Kaur, Additional Civil Judge (Senior Division), Fatehgarh Sahib. The application was filed in the court on 14.02.2020. After the completion of the pleadings, the learned trial court framed issue on 20.3.2023



and the case was adjourned to 17.4.2023. On 17.4.2023, no evidence was present and the case was adjourned to 19.5.2023. On 19.5.2023, no evidence was present and the case was adjourned to 16.8.2023. On 16.8.2023, no evidence of the applicant was present and the case was adjourned to 20.10.2023, subject to last opportunity. On 20.10.2023, no evidence was present and the case was adjourned to 15.01.2024. It was specifically mentioned in the zimni order that if the applicant did not lead any evidence, the evidence of the applicant will be closed by order. No evidence of the applicant was present on 15.1.2024 and the evidence of the applicant was closed by order.

12. It is worthwhile to mention here that during the pendency of the application under order 9 rule 13 CPC the court has stayed the execution proceedings. The learned trial court has given five opportunities to the applicant to conclude his evidence, but the applicant has not examined any witness. He himself did not step into the witness box. It was held by Hon'ble Supreme Court in case titled as M/s.Shiv Cotex vs Tirgun Auto Plast P. Ltd and others (Supra), in which it was held in para no.16, which reads as follows:-

16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have ground like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order 17 Rule 1 Civil Procedure Code is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order 17 Rule 1 Civil Procedure Code should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-



rule (1) of Order 17 Civil Procedure code but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and non exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit – whether plaintiff or defendant – must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril, insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting the suit and producing its evidence. If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved no sympathy in second



appeal in exercise of power under Section 100 CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed.

13. *The perusal of the above discussed case law shows that the trial court has rightly closed the evidence of the applicant....”*

A perusal of the above order would show that it had been duly recorded by the Appellate Court that the application was filed by the petitioner under Order 9 Rule 13 CPC on 14.02.2020 and the issues were framed on 20.03.2023 and thereafter, the case was adjourned to 17.04.2023, on which date, no evidence was led by the present petitioner and thereafter, even on 19.05.2023, as well as on 16.08.2023, no evidence was produced and that on 16.08.2023, the case was adjourned to 20.10.2023 subject to last opportunity, however, even on 20.10.2023, no evidence was produced by the present petitioner and the case was adjourned to 15.01.2024.. It was observed in the zimni order dated 20.10.2023 that if the applicant-petitioner did not lead any evidence, then, the evidence of the petitioner would be closed by order and since, no evidence was produced even on 15.01.2024, the evidence of the petitioner was closed by order. By relying upon the judgment of the Hon’ble Supreme Court and also taking into consideration the abovesaid facts and circumstances, the judgment of the trial Court dismissing the application filed by the petitioner under Order 9 Rule 13 CPC was upheld and the appeal filed by the petitioner was dismissed.

7. Learned counsel for the petitioner has not been able to show that



the observations made in the abovesaid orders are perverse or contrary to the record. From the abovesaid facts, which have not been disputed before this Court, it is apparent that sufficient opportunities were given to the petitioner to produce his evidence, including last opportunity and even a peremptory order was passed to the effect that in case, the evidence of the petitioner is not produced on the next date of hearing, then, the evidence of the petitioner would be closed and thus, the petitioner deserves no further opportunity to lead evidence. There being no evidence produced by the petitioner in support of the averments made in the application under Order 9 Rule 13 CPC, in spite of sufficient opportunities, thus, the application has been rightly rejected. The impugned orders being in accordance with law, deserve to be upheld.

8. It would be relevant to note that the impugned order passed by the Appellate Authority was passed on 12.08.2024. However, the present revision petition has been drafted on 17.07.2025 after a period of more than 11 months without any justifiable reason. It is apparent that the petitioner, who is the judgment debtor, is making every endeavour to delay the proceedings and to delay the execution of the decree dated 04.12.2019 passed in favour of the respondent-plaintiff for possession by way of specific performance.

9. Keeping in view the abovesaid facts and circumstances, the impugned orders are in accordance with law and deserve to be upheld and are accordingly upheld and the present revision petition being meritless, deserves to be dismissed both on merits as well as on delay and laches and is accordingly, dismissed.

22.07.2025

Pawan

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No

(VIKAS BAHL)
JUDGE