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

**CR-5037-2025 (O&M)
Date of Decision: 01.08.2025**

Balbir Kaur and others

.....Petitioners

Vs.

Satish Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Vishal Sodhi, Advocate,
for the petitioners.

SUDEEPTI SHARMA J. (ORAL)

1. The prayer in the present petition is to set aside the *ex parte* order dated 31.08.2015, *ex parte* judgment and decree dated 07.04.2016 and order dated 09.11.2023 passed by learned Civil Judge (Senior Division), Patiala, dismissing the application under Order 9 Rule 13 CPC as well as the judgment dated 08.05.2025 passed by the learned Additional District Judge, Patiala.

2. Notice of motion.

3. On asking of this Court, Mr. Aakash Singla, Advocate, accepts notice and filed his Vakalatnama on behalf of respondent No.1.

4. Learned counsel for the petitioners contends that the husband of petitioner No.1 i.e. Manjit Singh was defendant in a suit for recovery filed by the respondents/plaintiffs and husband of petitioner No.1/defendant was appearing in person. The matter was fixed for filing of written statement,



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but due to non-filing of written statement, cost of Rs.300/- was imposed by the trial Court vide its order dated 24.07.2015 and the matter was adjourned to 18.08.2015 for filing of written statement. On 18.08.2015, husband of petitioner No.1/defendant could not file written statement and the matter was again adjournment to 31.08.2025. He further submits that on 31.08.2015, due to illness of the husband of petitioner No.1/defendant, he could not appear before the learned trial Court and he was proceeded against *ex parte*. Thereafter, husband of petitioner No.1/defendant was arrested by the police after eight days i.e. on 09.09.2015 and he remained in custody till 16.03.2017. In the meantime, impugned judgment and decree dated 07.04.2016 was passed against the husband of petitioner No.1/defendant. Therefore, non-appearance of the husband of petitioner No.1/defendant was not intentional and due to unavoidable circumstances, he could not appear before the learned trial Court. Since the husband of petitioner No.1/defendant was in custody, therefore, he could not move any application for setting aside judgment and decree dated 07.04.2016. He relies upon the judgment passed by Hon'ble the Supreme Court in **G.P.Srivastava Vs. R.K.Raizada and others, 2000(3) SCC 54** as well as the judgments passed by this Court in **Harmader Singh and others Vs. Malkiat Singh and another, 2006(4) RCR (Civil) 669**, **M/s N.K.Electronics Vs. Narinder Kumar, 2013(4) RCR (Civil) 143** and **Baldev Singh Vs. Labh Singh, 2003(3) RCR (Civil) 592**. Hence, he prays that the present petition be allowed.



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5. *Per contra*, learned counsel for respondent No.1 submits that the husband of petitioner No.1/defendant was well aware of the proceedings and he appeared in other cases also through counsel. He further contends that limitation should not start from the date of the decree whereas it should start from the date when he was proceeded against *ex parte*. He further contends that the medical certificate of the husband of petitioner No.1 placed on record is not proved. He relies upon the judgment passed by the Full Bench of this Court in **Shri Anand Parkash Vs. Shri Bharat Bhushan Rai and another, 1981 AIR Punjab and Haryana 269** and prays for dismissal of the present petition.

6. I have heard learned counsel for the parties and perused the case file with their able assistance.

7. A perusal of the record shows that the respondents/plaintiffs filed a civil suit for recovery, wherein, husband of petitioner No.1/defendant was proceeded against *ex parte*. A perusal of the record further shows that husband of petitioner No.1/defendant could not appear on 31.08.2015 i.e. the date when he was proceeded against *ex parte*, due to his illness and he was admitted in the hospital. Thereafter, he was arrested on 09.09.2015 and remained in custody till 16.03.2017. It is a matter of fact that husband of petitioner No.1/defendant did not appear on 31.08.2015 and he was proceeded against *ex parte*. Thereafter, he filed an application under Order 9 Rule 13 CPC read with Section 151 CPC for setting aside the *ex parte* judgment and decree dated 07.04.2016 and *ex parte* order dated 31.08.2015,



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which was dismissed on 09.11.2023 on the ground of limitation by observing that the period of limitation to challenge the order was 30 days from the date of passing of the decree and the period of limitation started running from the date of passing of the decree and not from the date of the knowledge of the applicant. The petitioners filed appeal against the order dated 09.11.2023, which was again dismissed on 08.05.2025.

8. Admittedly, husband of petitioner No.1/defendant was arrested on 09.09.2015 and he remained in custody till 16.03.2017, since he was convicted under Section 138 of the Negotiable of Instruments Act. Immediately, after having the knowledge about order dated 31.08.2015, whereby he was proceeded against *ex parte* and *ex parte* judgment and decree dated 07.04.2016, he moved an application under Order 9 Rule 13 read with Section 151 CPC before the learned Civil Judge (Senior Division), Patiala. During the pendency of the decision in the application, husband of petitioner No.1 expired and his legal representatives were impleaded as party in the application.

9. Present is the case with peculiar facts and circumstances since, the legal representatives of the person proceeded against *ex parte* and against whom, judgment and decree dated 07.04.2016 has been passed for recovery of Rs.35,00,000/- along with interest @ 6% per annum from the date of agreement to sell till actual realization and it is the legal representatives, who would be facing execution. Further, the judgment and decree dated 07.04.2016 is passed in a suit for recovery and for the lapse on the part of



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husband of petitioner No.1, who could not appear and did not even engage any lawyer, the petitioners should not suffer.

10. Now coming to the judgment referred to above by learned counsel for the petitioners in **G.P.Srivastava's case (supra)**, wherein, Hon'ble the Supreme Court held that Court is not to adopt hyper-technical approach and where a party approaches the Court immediately within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not *mala fide* or intentional. Hon'ble the Supreme Court further held that even if the appellant was found to be negligent, the other side could have been compensated by costs and the *ex parte* decree set aside on such other terms and conditions as were deemed proper by the trial Court.

11. In **Harmader Singh's case (supra)**, this Court held that limitation for filing an application for setting aside *ex parte* decree starts from the date of knowledge of *ex parte* decree.

12. This Court in **Baldev Singh's case (supra)**, held that limitation for filing an application for setting aside *ex parte* decree starts from the date of knowledge.

13. A perusal of the record shows that *ex parte* judgment and decree was passed on 07.04.2016 and the husband of petitioner No.1 was released from jail on 17.03.2017 and after his release from jail, he immediately, filed application for setting aside the judgment and decree dated 07.04.2016 and *ex parte* order dated 31.08.2015.



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14. In view of the above referred to judgment, the application moved by the husband of petitioner No.1 is not time barred, since it was moved within the specified time from the date of his knowledge i.e. immediately after his release from custody on 17.03.2017.

15. So far as the Full Bench judgment of this Court cited by learned counsel for respondent No.1 in **Shri Anand Parkash's case (supra)** is concerned, the question involved for decision was whether the provisions of Section 35B CPC are mandatory and if so, to what extent. The Full Bench of this Court held that in the event of party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the prosecution of the suit or the defence, as the case may be and that no other extraneous consideration would weigh with the Court in exercising its jurisdiction against the delinquent party. Further, it is held that where costs are not paid as a result of the circumstances beyond the control of the defaulting party then the Court will be well within its jurisdiction to exercise its power under Section 148 CPC in favour of the defaulting party if a strong case is made out for the exercise of such jurisdiction.

16. Hon'ble the Supreme Court in para No.9 of the judgment passed in **Manohar Singh Vs. D.S.Sharma and another, (2010) 1 Supreme Court Cases 53** held as under:-

“9. We may also refer to an incidental issue. When Section 35-B states that payment of such costs on the date next following the date of the order shall be a condition precedent for further prosecution, it clearly



indicates that when the costs are levied, it should be paid on the next date of hearing and if it is not paid, the consequences mentioned therein shall follow. But the said provision will not come in the way of the court, in its discretion extending the time for such payment, in exercise of its general power to extend time under Section 148 of CPC. Having regard to the scheme and object of Section 35B, it is needless to say that such extension can be only in exceptional circumstances and by subjecting the defaulting party to further terms. No party can routinely be given extension of time for payment of costs, having regard to the fact that such costs under Section 35B were itself levied for causing delay.”

17. In view of the above and law laid down by Hon’ble the Supreme Court as well as the facts and circumstances of this particular case, this Court is of the view that the petitioners, who are legal representatives of a person, who was proceeded against *ex parte* and against whom *ex parte* judgment and decree was passed in a suit for recovery, should not suffer and should be given one chance of hearing on merits.

18. Consequently, the present revision petition is **allowed**. Order dated 09.11.2023 passed by learned Civil Judge (Senior Division), Patiala, whereby, the application under Order 9 Rule 13 CPC for setting aside order dated 31.08.2015 and *ex parte* judgment and decree dated 07.04.2016, was dismissed, as well as the judgment dated 08.05.2025 passed by the learned Additional District Judge, Patiala, whereby the appeal filed against the order dated 09.11.2023 by the petitioners was dismissed, are set aside, subject to payment of Rs.50,000/- as costs to be deposited by the petitioners with the Punjab and Haryana High Court Bar Association.



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19. Application filed under Order 9 Rule 13 CPC by the petitioners for setting the *ex parte* judgment and decree dated 07.04.2016 and *ex parte* proceeding order dated 31.08.2015 is allowed. Judgment and decree dated 07.04.2016 and *ex parte* proceeding order dated 31.08.2015 are hereby set aside. The Civil Suit bearing No.65T dated 30.09.2014, CS No.1676/2024 tiled as 'Satish Kumar and another Vs. Manjit Singh' is restored to its original number. Learned Civil Judge (Senior Division), Patiala, is directed to proceed with the civil suit afresh from the date of passing of order dated 31.08.2015, whereby the husband of petitioner No.1 was proceeded against *ex parte* and grant one last effective opportunity to the petitioners to file written statement. Further to decide the civil suit afresh in accordance with law.

20. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

01.08.2025

Virender

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