

Ram Bhool Vs. Prithi Singh

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Court : Punjab and Haryana

Decided On : Feb-07-1991

Reported in : (1991)99PLR504

Judge : J.V. Gupta, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 9, Rule 13

Appeal No. : Civil Revision No. 1281 of 1990

Appellant : Ram Bhool

Respondent : Prithi Singh

Advocate for Def. : Ajay Lamba, Adv.

Advocate for Pet/Ap. : S.K. Mittal, Adv.

Disposition : Petition allowed

Judgement :

J.V. Gupta, C.J.

1. This revision petition is directed against the order of the District Judge, Gurgaon, dated February 19, 1990, whereby the order of the trial Court setting aside the ex parte decree was set aside and the ex parte decree dated February 12, 1988, was restored.

2. At the time of the motion hearing, it was submitted on behalf of the petitioner that the order setting aside the ex parte decree under Order IX Rule 13 Code of Civil Procedure, (hereinafter called the Code) was not appeal able.

3. The learned counsel for the respondent submitted that the decree was not ex parte as such and, therefore it could not be said to have been set aside under Order IX Rule 13 of the Code. It was further submitted that the decree was passed on merits.

4. After hearing the learned counsel for the parties I find merit in the contention raised on behalf of the petitioner that no appeal was competent against an order setting aside the ex parte decree under Order IX Rule 13 of the Code. On this short ground alone, the revision petition succeeds.' The impugned order is set aside and that of the trial Court is restored. However, the conduct of the petitioner seems to be to delay the proceedings one ground or the other. The suit was filed in the year 1985 and is pending since then. Under the circumstances, the petitioner undertakes to produce his entire evidence at his own responsibility, for which he is be afforded only one opportunity. If he fails to produce the entire evidence on the date to be fixed by the trial Court his evidence shall stand closed. The parties have been directed to appear before the trial Court on March 7, 1991, when the trial Court will fix a date for evidence of the defendant, if any in case he has already paid Rs. 300/- as costs awarded by the trial Court vide order dated November 6, 1989.