

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 2130 of 2014

Date of Decision: 28.07.2015

Tara Devi

.....Petitioner

Vs.

Rattan Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mani Ram Verma, Advocate,
for the petitioner.

Mr. Vaibhav Jain, Advocate,
for respondent No. 1.

Mr. A.K. Goyal, Advocate, for
Mr. Ramender Chauhan, Advocate,
for respondent No. 2.

SABINA, J.

Petitioner has filed this petition challenging the orders dated 26.07.2013 and 11.03.2014.

Learned counsel for the petitioner has submitted that initially suit had been filed by respondent No. 1 against the petitioner for specific performance of agreement to sell dated 09.09.2002. Petitioner filed her written statement. Thereafter, respondent No. 2 moved an application under Order 1 Rule 10, of the Code of Civil Procedure, 1908 (for short 'CPC') for being impleaded as a party and the case was adjourned from time to time for consideration on the said application. Petitioner had been pursuing the case and had no

knowledge that she had been proceeded *ex parte* vide order dated 26.07.2013. Application moved by respondent No. 2 under Order 1 Rule 10, CPC, was allowed. On coming to know about *ex parte* proceedings against her, petitioner moved an application for setting aside the *ex parte* proceedings against her.

Learned counsel for respondent No. 1, on the other hand, has opposed the petition and has submitted that the application for setting aside the *ex parte* proceedings against her had been filed by the petitioner after eight months of the passing of the order dated 26.07.2013.

In the present case, respondent No. 1 had filed suit for specific performance of agreement to sell dated 09.09.2002, executed by the petitioner in his favour. The suit is still pending before the trial Court. From the plea taken by the petitioner, it appears that although, she had been regularly visiting the Courts on each and every date of hearing but may be due to lack of communication between her and her counsel, she never came to know that she had been proceeded *ex parte* vide order dated 26.07.2013. The case was being adjourned from time to time for consideration on application under Order 1 Rule 10, CPC, filed by respondent No. 2. In case, petitioner is not permitted to join the proceedings, she will not be able to put her defence. In case, petitioner is permitted to join the proceedings, the *lis* between the parties will be disposed of on merits. Moreover, the plaintiff can be compensated with costs.

Accordingly, this petition is allowed. Impugned order dated 11.03.2014 is set aside. Consequently, the application moved by the petitioner for setting aside the *ex parte* proceedings against her is allowed subject to payment of ₹5,000/- as costs. Costs be disbursed to the plaintiff.

**(SABINA)
JUDGE**

July 28, 2015
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