

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT  
CHANDIGARH

Civil Revision No. 243 of 2015

Date of Decision: 10.04.2015

Viveka Nand

.....Petitioner

Vs.

Joginder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Amit Dhawan, Advocate,  
for the petitioner.

Mr. Lakhwinder Mann, Advocate  
for respondent No.1.

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**SABINA, J.**

Petitioner has filed this petition challenging the order dated 16.12.2014, whereby application moved by respondent No.1 under Order 9 Rule 7 of the Code of Civil Procedure, 1908 (for short 'CPC') was allowed.

I have heard learned counsel for the parties and have gone through the record available on the file, carefully.

Interim order dated 28.10.2013 as reproduced in the grounds of petition reads as under:-

*“Written statement on behalf of defendants No.1 and 3 has been filed today, But defendant No.2 has not filed written statement despite given ample opportunities therefore, defence of defendant No.2 is struck off. Now, to come up for 02.12.2013 for filing replication, if any, and for arguments of stay application.”*

A perusal of the further interim orders reproduced in the grounds of the petition reveal that presence of the counsel for respondent No.1 was being marked by the trial Court. Thereafter, respondent No.1 moved an application for setting aside the ex parte proceedings. The trial Court while allowing the application has held as under:-

*“The perusal of the file shows that plaintiff has filed the present suit for issuance of decree of Permanent Injunction restraining the defendants from interfering into peaceful and lawful possession use and enjoyment of the property described in the head note of the plaint. The perusal of the file further shows that on dated 07.09.2013 Advocate Shri Manish Tiwari, filed memo of appearance on behalf of applicant/defendant No.2. But on the next dated of hearing he failed to file regular power of attorney on behalf of applicant/defendant No.2. But however on dated 28.10.2013 the defence of defendant No.2 was struck off instead of proceeded as ex parte in the previous hearing on account of non filing of regular power of attorney. It is a cardinal principal of justice that actus curie neminem gravebit means a party shall not be suffer with the act of the Court. In order to conduct fair trial, the opposite party shall be granted an opportunity of hearing. The perusal of the file further shows that the case is at initial stage and issues have not been framed till yet in this case. As such, no prejudice is going to cause to the plaintiff if the defendant is allowed to join the proceeding subject to compensate the plaintiff with the cost. In view of the facts and circumstances of the case, the applicant/defendant No. 2 is allow to join the proceedings, subject to cost of ₹1500/- to be paid to the plaintiff. Case is adjourned to 14.01.2015 for payment of cost as well as filing written statement. It is further*

*made clear that only one opportunity is granted to defendant No.2 to file written statement.”*

Although in the present case, defence of respondent No. 1 was struck off vide order dated 28.10.2013 and respondent No. 1 was required to challenge the said order by approaching this Court but respondent No. 1 treating the said order as initiation of ex parte proceedings against him approached the trial Court for setting aside the ex parte proceedings against him. The trial Court vide impugned order permitted respondent No. 1 to join the proceedings and file his written statement as the case is at initial stage. Although, the remedy availed by respondent No. 1 was not proper remedy but now that the parties are before this Court and while exercising powers under Article 227 of the Constitution of India, this Court can ensure that no injustice is caused to any of the parties. The case of respondent No. 1 was that he resided in Delhi and the summons qua him had been issued at a wrong address. In fact respondent No. 1 had not received the summons and had not engaged any counsel to appear on his behalf. In case, respondent No. 1 is allowed to join the proceedings, the case of the parties would be disposed of on merits. The impugned order is just and fair.

Keeping in view the justice oriented approach, interference by this Court is not called for.

Hence, this petition is dismissed.

**(SABINA)  
JUDGE**

April 10, 2015  
*nitin*