

In the High Court of Punjab and Haryana at Chandigarh

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CR-23-2014

Date of decision: 21.8.2015

DARSHAN SINGH

.....Petitioner

Versus

AJAIB SINGH

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Jai Bhagwan, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.

Petitioner/ defendant has filed this petition for setting aside the order dated 16.7.2011 (Annexure P-1), vide which his defence has been struck off and order dated 4.12.2013 (Annexure P-2), vide which application filed by him for setting aside ex-parte order has been dismissed.

Case was fixed before the trial Court for filing written statement subject to special costs of ₹ 300/-. Despite calling the case for several times, none appeared on behalf of the defendant. Faced with this situation, trial Court passed the order dated 16.7.2011 striking off the defence of the defendant and proceeded against ex parte. Thereafter, defendant Darshan Singh moved an application for setting aside the ex-parte order. The said application

was declined by the Civil Judge (Jr.Divn.) Kurukshetra on 4.12.2013.

Trial Court has observed that suit for recovery was filed on 6.12.2010. Defendant, through his counsel, appeared in the Court on 9.4.2011 and power of attorney on his behalf was filed. Case was adjourned for filing written statement but the same was not filed despite repeated adjournments. Case was adjourned for filing written statement subject to payment of cost also but defendant neither appeared nor filed the written statement. Consequently, his defence was struck off and he was proceeded against ex-parte. Thereafter, plaintiff was allowed to lead ex-parte evidence and he examined four witnesses in his ex-parte evidence up to 22.12.2012. When the case was fixed for ex-parte arguments and for production of documents, which are per se admissible, application for setting aside the ex-parte order was moved by engaging a new lawyer. In the said application, applicant has sought setting aside ex parte order dated 1.10.2011 but in fact no such ex parte order was passed on the said date rather ex parte order was passed on 16.7.2011. Defendant kept mum during the intervening period and when the case reached up to the stage of final arguments, the application was already moved. Trial Court allowed the defendant to participate in the proceedings subject to payment of ₹ 5,000/- as costs.

In this case, notice of motion was issued on 9.1.2014 and proceedings before the trial Court were stayed. None has come forward to represent the respondent despite four adjournments on record.

Be that as it may, petitioner has to prove lawful grounds on which ex-parte order against him can be set aside. In view of material on record, no ground exists to interfere in the order dated 4.12.2013 passed by the Civil Judge (Jr.Divn.), Kurukshetra.

Consequently, this petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

August 21, 2015
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