

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.57 of 2015
Date of decision:20.02.2015

Anil Kumar

....Petitioner

Versus

Shopat Rai & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Ajay Jain, Advocate, for the petitioner.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition is to the order dated 01.12.2014 (Annexure P3), whereby the application of the defendant No.3-petitioner, for setting aside the *ex parte* order dated 13.03.2012 and to allow him to file written statement and to contest the suit was dismissed.

While issuing notice of motion, this Court passed the following order on 07.01.2015:

“Contentends that the suit for partition was filed by respondent no.1 and the petitioner, who was arrayed as defendant no.3 was proceeded against *exparte* on 13.3.2012. He filed an application on 20.9.2014 (Annexure P/1) taking the plea that he was a resident of Ahmadabad and the date of knowledge was stated to be 24.8.2014. It is submitted that it is not denied in the reply as such that he is residing at Ahmadabad for the last 20 years. However, the Court has wrongly taken into consideration an appeal (Annexure P/4) filed by the petitioner and his brother wherein his address has been shown at Fazilka. It is submitted that under Order 9 Rule 7 CPC good cause has to be shown which had been furnished but wrongly discarded by the trial Court. It is further pointed out that issues have been framed only on 4.9.2014 and the case was fixed for 9.9.2014 for evidence and is now fixed for 22.1.2015. The case being at initial stage costs could have been imposed for the delay, if any, which had occurred.

Notice of motion to respondent no.1 only for 30.1.2015.

Dasti only.

In the meantime, the petitioner is permitted to file written statement subject to final decision of the present revision petition on payment of ₹ 10,000/- as costs to the plaintiff.”

In pursuance of the said order, the Trial Court has allowed the petitioner to file his written statement since the plaintiff's counsel has received the costs of ₹10,000/- from the petitioner. However, from a perusal of the order dated 22.01.2015, it would be apparent that the plaintiff has already completed his evidence and the case is fixed for the defendants' evidence.

Counsel for the petitioner has vehemently submitted that since the petitioner has been allowed to file written statement, he be permitted to recall the witnesses examined by the plaintiffs, for the purposes of cross-examination. He places reliance upon the judgment of this Court in **Jamshed Ali Khan & others Vs. Udhya Bir & others 2014 (1) PLR 490**, to support his contention.

However, this Court is not in agreement with the argument raised. The suit is for partition, as noticed above and the petitioner has been allowed to join the proceedings and to file written statement. It is open to him to lead the evidence in support of his written statement. A perusal of the memo of parties would go on to show that the parties are closely related to each other and therefore, the interests are common in the suit for partition. By allowing the prayer which is for recall of witnesses would amount to setting the clock back and the proceedings would be further delayed.

Accordingly, the present revision petition is allowed with the liberty to the petitioner to join the proceedings and continue from the stage when he filed the written statement, by setting aside the order dated 01.12.2014, to that limited extent.

20.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE