

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.7595 of 2015

Date of decision: 16.11.2015

Darshan Singh

...Petitioner

versus

Balkar Singh and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek K. Thakur, Advocate,
for the petitioner.

RITU BAHRI, J.

Challenge in this petition is to the order dated 03.09.2015 (Annexure P-8) passed by the Civil Judge (Junior Division), Kapurthala, whereby application filed by the defendant-petitioner for setting aside the exparte order/proceedings dated 09.07.2015 (Annexure P-5), has been dismissed on the ground that the said application was filed beyond the period of limitation of 30 days.

The present suit has been filed in March, 2011 and immediately after service of summons, the defendant-petitioner filed his written statement. Thereafter, amendment of the plaint under Order 6 Rule 17 CPC was allowed vide order dated 28.04.2015 (Annexure P-3). Two applications made by the plaintiffs-respondents, one for conducting demarcation of the property and another for appointment of Local Commissioner, were also allowed by the trial Court. After amendment of the plaint was allowed vide order dated 28.04.2015 (Annexure P-3), the defendant-petitioner could not appear before the trial Court on 09.07.2015. Therefore, he was proceeded against exparte vide order dated 09.07.2015 (Annexure P-5). Consequently, he moved an

application for setting aside the exparte order dated 09.07.2015, which has been dismissed on the ground that the same has been filed beyond the period of 30 days of passing of the order.

At this stage, reference can be made to a judgment passed by this Court in **Ghanshyam Dass Vs. Kamal Kishore and another**, 2011 (3) RCR (Civil) 846, wherein the law of limitation for setting aside the exparte proceedings has been discussed by referring to the judgments delivered in **Trilok Singh Vs. Smt. Ganga Devi**, 1983 (2) RCR (Rent) 226 and **Siri Chand Vs. Ram Dhan and another**, 1989 (1) Rev. L.R. 481, wherein it was held that period of 30 days under Article 123 of the Limitation Act, 1963 applies only on an exparte decree and not on exparte proceedings. This Court in another judgment passed in **Kuldip Kaur Vs. Gurdeep Singh**, 1994 (1) RRR 999, while referring to the aforesaid judgments, has held that there was no limitation provided for setting aside the exparte proceedings under Order 9 Rule 7 CPC.

In view of the settled law, as discussed in the aforesaid judgments, this Court deems it appropriate to provide adequate opportunity to the defendant-petitioner to defend his case in due course of law.

In view of the above, the impugned orders dated 09.07.2015 and 03.09.2015 (Annexures P-5 and P-8 respectively) are set aside and defendant-petitioner is permitted to file written statement to the amended plaint and pursue his case before the trial Court, subject to costs of Rs.3,000/- to be paid to the plaintiffs-respondents.

Allowed accordingly.

(RITU BAHRI)
JUDGE

16.11.2015
ajp