

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1400-2016 (O&M)

Date of Decision : 17.08.2016

Phulo Devi

.... Petitioner

Versus

Satbir and another

..... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Pawan Singh, Advocate,
for the petitioner.

Rekha Mittal, J. (Oral)

The present petition has been directed against order dated 08.01.2016 passed by Civil Judge (Jr. Divn.), Kharkhoda, District Sonipat whereby an application filed by the petitioner for setting aside ex-parte order dated 15.12.2014 and for permission to the petitioner to contest the case by filing written statement as well as leading evidence has been dismissed.

Counsel for the petitioner has submitted that the petitioner did not receive any summon nor she ever refused to accept process issued by the Court despite that report with regard to refusal was obtained. It is further submitted that the petitioner is residing with her married daughter at Sonipat whereas the respondents/plaintiffs have given address of Village Gorar. It is argued that the petitioner learnt about pendency of the suit when she appeared in the proceedings for partition pending in the Court of Tehsildar, Kharkhoda on 07.08.2015. She filed the instant application without any delay. There was no reason for the petitioner to stay away from the

proceedings had she gained knowledge of pendency of the suit earlier particularly in the circumstances that she filed the application for setting aside ex-parte order immediately after she came to know of pendency of the suit.

I have heard counsel for the petitioner, perused the paper book particularly the impugned order.

The learned trial Court has noticed that summons were issued for service of the petitioner, received back with the report that the petitioner was not found present at the spot. However, the said report is neither attested by Sarpanch of the village nor by any other witness. The petitioner was ordered to be summoned through Munadi for 15.12.2014 but the said report was found to be not available on the file.

The trial Court has not at all adverted to plea of the petitioner that she is not residing at the given address of Village Gorar and rather is residing with her married daughter at Sonipat. There is no representation on behalf of the respondents/plaintiffs to challenge the correctness of the averments raised in the application either with regard to the petitioner not staying at Village Gorar or she gained knowledge of pendency of the suit when she appeared in the proceedings for partition on 07.08.2015.

In this view of the matter, it can be safely held that the learned trial Court committed a serious error rather illegality by refusing to accept plea of the petitioner for setting aside ex-parte order dated 15.12.2014 and providing her an opportunity to file the written statement and defend the proceedings. That being so, the impugned order cannot be allowed to sustain and accordingly set aside.

For the forgoing reasons, the petition is allowed, the impugned order is set aside. As a consequence, the order dated 15.12.2014 whereby ex-parte proceedings were initiated against the petitioner is also ordered to be set aside with liberty to the petitioner to file the written statement and defend the proceedings in accordance with law.

17.08.2016

Dinesh

**(REKHA MITTAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No