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

CR-2212-2016

Date of decision : 29.07.2016

Jony Kumar

... Petitioner

Versus

Baljit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gaurav Gogna, Advocate
for the petitioner.

None for respondent Nos.1 and 2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.2 is aggrieved of the impugned order dated 23.12.2015 (Annexure P-1), whereby the application under Order 9 Rule 13 CPC for setting aside the *ex parte* proceedings has been allowed and the petitioner has been allowed to join the proceedings from the date of application, whereas the suit is at the stage of plaintiff's evidence.

Mr. Gaurav Gogna, learned counsel appearing on behalf of the petitioner submits that the respondent(s)-plaintiff(s) had filed a suit seeking specific performance of the agreement to sell dated 09.08.2008. The suit aforementioned was filed on 06.08.2015. The petitioner-defendant No.2 purchased the property during the subsistence of the agreement to sell vide sale deed dated 17.07.2009 and in this respect, an application was moved by

the respondent(s)-plaintiff(s) for impleadment of the petitioner as defendant No.2. The said application was allowed on 15.10.2014. The summons were issued on 10.11.2014 and was proceeded *ex parte* on 25.03.2015. The trial Court though noticed that the petitioner was not effectively served as summons were sent at the address given in the sale deed, whereas the actual address was different. The petitioner was granted permission to contest the suit from the stage as noticed above. He submits that in case, the petitioner is not granted the opportunity to file the written statement, he would not be able to set up a plea of *bona fide* purchaser.

This Court On 29.03.2016 had issued notice of motion to respondent Nos.1 and 2 being contesting respondents. As per office report, the respondent Nos.1 and 2 have been served, but no body has put in appearance on their behalf. Today again, there is no representation on behalf of them. Accordingly, I proceed to decide the revision petition on merits.

I have heard the learned counsel for the petitioner and appraised the paper book.

Shorn of the facts as noticed above are that it is a conceded position that the petitioner-defendant No.2 is a subsequent vendee during the subsistence of the agreement to sell, much less, pendency of the suit. Once the Court had granted permission to contest the suit at the stage i.e. the purpose for which the suit was filed, I am of the view that the petitioner-defendant No.2 ought to have granted one opportunity to file the written statement in order to defend the plea by leading cogent and direct evidence and as well as to cross-examine the witnesses of the respondent(s)-plaintiff.

The impugned order allowing the petitioner-defendant to join from the date of application definitely render injustice as the petitioner would not be able to cross-examine the witnesses. The entire exercise would be farcical.

In view of the aforementioned facts and circumstances, I am of the view that the petitioner should be granted one opportunity to file the written statement and thereafter, shall be granted opportunity to cross-examine the witnesses of the plaintiff(s) subject to the payment of cost of ₹ 10,000/- which shall be condition precedent.

Accordingly, the impugned order stands modified. The revision petition is allowed in the aforementioned terms.

29.07.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No