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

CR-2417-2014

Date of Decision : May 31st, 2016

Sport King India Ltd.

.... Petitioner

Versus

Dalbeer Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present Mr. Shubhashish Kukreti, Advocate,
for the petitioner.

Mr. P.K.S.Poolka, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside orders dated 10.09.2013 [Annexure P/1] and dated 18.12.2013 [Annexure P/3] whereby the petitioner-defendant was proceeded against *ex parte* and application for setting aside ex-parte order was also dismissed despite the fact that the case was at the stage of Plaintiff's evidence and the petitioner has not been afforded proper opportunity to lead its evidence.

Learned counsel for the petitioner submitted that the petitioner-defendant appeared and filed the written statement *inter alia* taking

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objections with regard to maintainability of the suit for permanent injunction against Co-sharer. It was also pleaded that the petitioner had purchased the land and the same was in his possession through registered sale deed. The respondent took several adjournments to lead evidence, but no evidence was led. Finally on 27.5.2013, evidence by way of affidavit of one PW was tendered. On the next date, no plaintiff witness was present. Despite several adjournments, the plaintiff failed to conclude his evidence and on 10.9.2013, the petitioner was not present and order was passed against the petitioner thereby initiating *ex parte* proceedings against it. On the very next day, the petitioner moved an application for setting aside the ex-parte order. On 18.12.2013, the Clerk of counsel for the petitioner was intimated that the case stood adjourned to 10.1.2014. On 10.1.2014, when the petitioner appeared in the case, he was informed that the said application has already been dismissed on the last date on account of non-appearance of the petitioner on 18.12.2013. The petitioner prayed that the said orders be set-aside as there was no reason for the petitioner not to appear before the Court either on 10.9.2013 or on 18.12.2013. Rather, the petitioner had put in appearance through Clerk of his counsel on 18.12.2013 and came to know that the case stood posted for 10.1.2014.

Learned counsel for the respondent submitted that the Court has rightly dismissed the application as the petitioner was not present on the first date when *ex parte* proceedings were initiated and subsequently, on 18.12.2013 when the application for setting aside the ex-parte order was dismissed. The present petition be dismissed.

Having considered the submissions made by learned counsel for

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the parties, this Court is of the considered view that the conduct of the petitioner is not upto the mark right from the very beginning because on 10.9.2013, the petitioner-defendant failed to put in appearance despite the fact that the counsel for the plaintiff was present and on that date, the Court below had passed the following order:-

“Present Sh. Naveen Kumar, Counsel for plaintiff.

None for defendant.

None appeared on behalf of the defendant despite repeated calls since morning. Witness Chamkaur Singh have also remain present for his cross-examination since morning. Time is 4.00 PM Defendant is proceeded against exparte. Now to come up on 23.10.2013 for exparte evidence of the plaintiff.

[Gurmeet Tiwana]
CJ JD/10.9.2013”

On the very next day, the application for setting-aside ex parte order was filed and that fact establishes that in fact, the present petitioner was watching the proceedings of the Court and just wanted that the witness should not be cross-examined and he was successful in achieving that goal. The Court entertained the application and same was kept for consideration upto 18.12.2013. On that date again, the petitioner did not come present and the Court below passed the impugned order thereby dismissing the application.

In view of the above, there are no grounds for setting aside the impugned orders and the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 31st, 2016
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