

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

**CR No.3382 of 2014 (O&M)
Date of decision:11.01.2016**

Vijay Kumar ... Petitioner
Vs.

Harinder Singh Mahindru and others ... Respondents

CR No.3510 of 2014 (O&M)

Vijay Kumar ... Petitioner
Vs.

Harinder Singh Mahindru and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. S.S.Sodhi, Advocate
for the petitioner.

Mr. H.K.Brinda, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two revision petitions bearing Nos.3382 and 3510 of 2014.

CR No.3382 of 2014 filed by the defendant-petitioner against the order dated 04.02.2014 (Annexure P-5), whereby, application seeking setting aside the ex parte order had been allowed

but opportunity to lead evidence had been declined. Vide order dated 19.08.2013, they were not only proceeded against ex parte but their evidence was closed by order.

CR No.3510 of 2014 is against the order dated 29.04.2013 (Annexure P-3) on the premise that the order dated 08.03.2013 calling upon the respondent-plaintiffs to pay the Court fee, has not been complied with, thus, the impugned order, is not sustainable in law.

The respondent-plaintiff had filed a suit for declaration that he is owner in possession of the house as shown in the site plan and for mandatory injunction directing the defendants to hand over the possession of the said house and for permanent injunction restraining the defendants from alienating and creating any sort of charge, much less, change in the nature of the suit property.

In the aforementioned case, petitioner-defendants filed an application under Order 7 Rule 11 of the Code of Civil Procedure, calling upon the respondent-plaintiff to pay the ad valorem Court fee as relief of possession had been sought. The trial Court vide order dated 08.03.2013 allowed the application directed the plaintiff to pay the ad valorem Court fee by the next date, i.e., 18.03.2013. The trial Court passed the following order on 29.04.2013 (in CR No.3382 of 2014) which reads thus:-

“Present: Sh. Dheeraj Kaushal, Adv. For the plaintiff.

Sh. S.K.Vashisht, Adv. For the defendant.

Today the case was fixed for giving the valuation of the suit as per the market value of the house and affix the Court fee. The Ld. Counsel for the plaintiff placed on record the affidavit of the power of attorney of plaintiff Harminder Singh in which it has been stated that the market value of the house as per his knowledge is Rs.10,000/-. Accordingly, Court fee of Rs.200/- was affixed earlier. Perusal of the record shows that an issue regarding affixation of proper Court fee has already been framed. If the defendant wants to submit that the Court fee was to be affixed as per the value of the property to the tune of Rs.30,00,000/- then he can argue the same at the time of final arguments. Thus, the issue of affixation of proper Court fee will be taken up at the time of final decision of the present case. Notice for DWs subject to last and final opportunity to come upon 17.5.2013.”

Thereafter, on 19.08.2013, the petitioner-defendant was not only proceeded against ex parte but the evidence was also, closed which reads thus:-

“Present: Sh. Dheeraj Kaushal, Adv. For the plaintiff.

None for the defendant.

Today the case was fixed for DWs. Case called several times since morning. It is already 3.45 pm.

But none has appeared on behalf of the defendant neither in person nor through counsel as such defendant is proceeded against ex parte. Previous costs not paid. No DW is present. Evidence of the defendant is closed by order as per previous order. Now to come up on 27.08.2013 for ex parte argument and consideration.

*Sd/-
(Sonali Singh)
CJ JD Ropar
19.08.2013.”*

The grievance of the petitioner is that the trial Court while allowing the application for setting aside the ex parte proceedings has not set aside the order, whereby, the evidence has been closed by order. The operative part of the order dated 04.02.2014 reads thus:-

“Ld. Counsels for both the parties have been heard. As per the principles of natural justice, every person should be given opportunity of fair hearing. Although the applicants have been negligent in not keeping track of date fixed in present suit but in the interest of justice, the present application is allowed as it will cause prejudice to them if they are not given opportunity of defending the present suit against them. As such the order dated 19.08.2013 by which the defendants were proceeded against ex parte is hereby set aside and the applicants are allowed to join the proceedings of the present case,

subject to deposit of cost of Rs.1000/- in free legal aid fund.”

In another revision petition No.3510 of 2014, grievance of the petitioner is that order dated 08.03.2013 has not been complied with on the ground that vis-a-vis ad valorem Court fee, issue has already been framed and shall be decided at the time of final decision.

I have gone through the paper book, as well as, the impugned orders.

I am of the view that the trial Court ought to have set aside the order closing the evidence while allowing the application seeking setting aside the ex parte order instead of allowing the petitioner-defendant to join proceedings from the next date. Since the impugned order is not fair, the present revision petition has been filed. The operative part of the order reveals that petitioner had been permitted to join the proceedings, I am of the view that the order of the trial Court is specific vis-a-vis observations rendered in the order dated 19.08.2013, whereby, evidence of the petitioner has been closed. Accordingly, the impugned order is modified and the petitioner is granted opportunity to lead evidence, in essence, from the stage of the suit, from which they had been allowed, to lead their evidence.

With the aforementioned observations, revision petition No.3382 of 2014 is disposed of.

Vis-a-vis relief of ad valorem Court fee, I am of the view that the suit was not for possession but for mandatory injunction. The Court fee vis-a-vis valuation of the property is liable to be paid and in this regard, issue has already been framed, in my view, no prejudice has been caused to the petitioner by the order dated 29.04.2013 declining application filed under Order 7 Rule 11 CPC as the trial Court shall be at liberty to determine such issue at final stage/arguments.

Accordingly, there is no merit in the revision petition No.3510 of 2014 and the same is hereby dismissed.

(AMIT RAWAL)
JUDGE

January 11, 2016
savita