

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

**CR No.3677 of 2016(O&M)
Date of decision :25.05.2016**

Satish Kumar

..... Petitioner

Versus

Tarun Kumar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.B.D.Sharma, Advocate
for the petitioner.

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

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 22.04.2016 passed by the learned Civil Judge (Junior Division), Malout whereby the application filed by the petitioner under Order 9 Rule 7 of the Code of Civil Procedure 1908 (for short 'CPC') for setting aside the *ex parte* order dated 08.10.2012 has been dismissed.

2. Learned counsel for the petitioner contended that the petitioner was not duly served in the suit nor any substituted service was effected. He was wrongly proceeded

against *ex parte*. He contended that the plaintiff-respondent no.1 had assured that he will withdraw the suit against the petitioner. But, later on, he did not withdraw the suit. So, it has become necessary for the petitioner to defend the suit. He contended that the absence of petitioner was not intentional. Thus, he contended that the learned trial Court has wrongly dismissed the application.

3. I have duly considered the aforesaid contentions.

4. As per the provisions of Order 9 Rule 7 CPC, the *ex parte* proceedings can be set aside where the defendant assigns good cause for his non-appearance. In the instant case, the petitioner has sought setting aside of the *ex parte* proceedings dated 08.12.2012 on the plea that he was not duly served in the suit and plaintiff was assured that he will withdraw the suit. It is not disputed that the plaintiff-respondent has filed the suit against the present petitioner-Satish Kumar and his brother Rakesh Kumar. Both of them are residing at the same address. Learned trial Court has categorically mentioned in the impugned order that the summons were duly served on the petitioner on 08.10.2012. But, he did not come present in the Court and was proceeded against *ex parte*. Similarly, his brother Rakesh Kumar was also proceeded against *ex parte* on 03.09.2013. The summons to both the defendants i.e. petitioner and respondent no.2 were served on the same address. When the *ex parte* evidence

of the plaintiff was closed, respondent no.2-Rakesh Kumar moved an application for setting aside the *ex-parte* proceedings on 14.10.2014. In the impugned order, the learned trial Court has mentioned that now the case is fixed for defendants evidence. It means the application moved by his brother was allowed. Learned counsel for the petitioner has also not disputed that the suit is being contested by respondent no.2-Rakesh Kumar, the brother of the petitioner.

5. This fact is not disputed that the petitioner and his brother Rakesh Kumar are residing at the same address. They have been served in the suit at the same address. Respondent no.2 has filed the application on 09.03.2016 for setting aside the *ex parte* proceedings, whereas his brother respondent no.2-Rakesh Kumar is already contesting the suit. Even, as per averments in the application, the petitioner has alleged that plaintiff has assured to withdraw the suit, which shows that he was having knowledge with respect to the pendency of the suit. Now, the case has reached at the fag end and is about to be concluded when the present application has been moved by the present petitioner. The apparent intention of the present petitioner is only to delay the proceedings. Otherwise, there was no reason for the petitioner to keep mum and to move the application for setting aside the *ex parte* proceedings when the case has reached at the fag end when his brother residing on the same address has already joined the

proceedings.

6. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the well reasoned order passed by the learned trial Court, which does not call for any interference by this Court.

7. Thus, the present revision petition having no merits, is hereby dismissed.

25.05.2016

S.khan

**(DARSHAN SINGH)
JUDGE**