

Civil Revision No.6529 of 2016

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.6529 of 2016

Date of Decision: 16.11.2016

Darshan Singh

---Petitioner

versus

Surinder Kaur and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. R.K.Dadwal, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition directs challenge against order passed by the Civil Judge (Junior Division), Hoshiarpur whereby application for setting aside the ex parte order dated 8.4.2011 has been dismissed.

Counsel for the petitioner has submitted that respondent Surinder Kaur successor in interest of Nirmal Singh has filed a suit for

possession by way of specific performance of agreement to sell dated 10.8.2006 in respect of land measuring 5 kanals 1 marla, detailed in head note of the plaint. In the said suit, the petitioner/defendant was not tendered summons much less being served in accordance with law as he is residing abroad i.e. U.K. The petitioner learnt about pendency of the suit on 15.12.2014 during proceedings of another suit filed by Raghbir Singh on the basis of agreement to sell. Within two days thereafter, the petitioner put in appearance before the trial court on 17.12.2014 and thereafter filed application (Annexure P-1). It is further submitted that a serious prejudice is likely to be caused to the petitioner in case the ex parte order dated 8.4.2011 and proceedings conducted in his absence till 17.12.2014 are not set aside. It is prayed that the petitioner may be allowed to join the proceedings from the stage he was proceeded against ex parte and he is ready to compensate the other side for delay, if any, attributable to the petitioner.

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

The learned trial court has noticed two important and material facts namely copy of power of attorney on the basis of which Jarnail Singh

has filed the application for setting aside ex parte order dated 8.4.2011 has not been produced on record. Secondly, Darshan Singh appeared in the case through Sh. Kuldeep Singh, Advocate on 17.12.2014 who filed the application for setting aside the ex parte order on 6.11.2015.

Counsel has not disputed correctness of the factual findings recorded by the Court below. As the application was filed through attorney and copy of the attorney was not placed on record, application was liable to be dismissed at the threshold. Perusal of application (annexure P-1) would indicate that there is no explanation as to why it took approximately one year in filing the application for setting aside the order even after appearance of the petitioner in the proceedings in December 2014. This apart, in para 5 of the application it has been mentioned that in case defendant/applicant is not allowed to join the proceedings then he will suffer irreparable loss and injury. In the prayer clause, it has been mentioned that ex parte order may be set aside and the applicant may be allowed to joint/contest the proceedings. The applicant has already been allowed to join the proceedings on 17.12.2014 and since then he is pursuing the proceedings before the trial court. The courts help those who are careful and vigilant and not those who sleep over their rights. In view of the facts

and circumstances discussed hereinbefore, I do not find any reason to interfere in the impugned order or grant indulgence of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

16.11.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No