

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6804 of 2015 (O&M)
Decided on: 10.05.2016

Surinder Singh

....Petitioner

Versus

Avinash Kaur and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Deepak Thapar, Advocate
for the petitioner.

Mr. Rahul Rampal, Advocate
for respondents No.1 to 4.

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?*

REKHA MITTAL, J.

The present petition has been directed against order dated 09.09.2015 (Annexure P-1) passed by the Civil Judge (Jr. Division), Ludhiana, dismissing the application filed by the petitioner for setting-aside the *ex parte* order dated 05.04.2014 passed in proceedings under Order 39 Rule 2-A of the Code of Civil Procedure (in short 'CPC') initiated by Avinash Kaur and others.

Avinash Kaur and others filed an application under Order 39 Rule 2-A read with Section 151 CPC for initiating contempt proceedings against the petitioner/respondent that culminated in the order dated 05.04.2014 (Annexure P-6) passed by the Civil Judge (Jr. Division) Ludhiana, whereby the petitioner was directed to pay

compensation to the tune of Rs.5,000/- failing which his property was ordered to be attached till realization of the amount. The petitioner was proceeded against *ex parte* in the said proceedings that remained pending w.e.f. 16.12.2010 till April, 2014. The petitioner filed an application for setting-aside *ex parte* order dated 05.04.2014 and after reply being filed by the contesting party, the issues were framed vide order dated 20.03.2015 (Annexure P-11). As per the order dated 20.03.2015, the petitioner was given two opportunities to produce his evidence with a specific stipulation that no further adjournment shall be given for the said purpose. Subsequent thereto, on one of the dates, the petitioner tendered into evidence his affidavit by way of examination-in-chief. On the second date, neither the petitioner appeared for his cross-examination nor any witness on his behalf was present. As a result, the trial Court closed the evidence and dismissed the application for setting-aside *ex parte* order dated 05.04.2014 vide impugned order dated 09.09.2015.

Counsel for the petitioner has submitted that the petitioner could not appear before the trial Court on the second date fixed for his evidence as he was unwell on that date. It is further submitted that keeping in view the interest of justice coupled with the fact that the petitioner should get sufficient opportunity to prove that he had not violated an order of the Court inviting proceedings for committing contempt of Court, the impugned order may be set-aside and the petitioner may be allowed another opportunity to adduce his evidence by way of his cross-examination and any other witness to be examined on his behalf. It is further submitted that the respondents can well be

compensated with costs for delay, if any, attributable to the petitioner.

Counsel for the respondents has supported the impugned order with the submission that as the petitioner failed to avail of two effective opportunities without any justifiable reason, he has no case worth consideration.

I have heard counsel for the parties, perused the paperbook and the various annexures appended with the petition.

The proceedings under Order 39 Rule 2-A CPC remained pending in the Court for over three years. The amount of Rs.5,000/- imposed upon the petitioner has already been deposited in compliance with the order passed by this Court. Admittedly, the petitioner did not file any list of witnesses in compliance with order dated 20.03.2015. The trial Court while framing Issues has held in clear terms that the petitioner shall be entitled to only two opportunities to adduce his evidence. Perusal of the impugned order as well as another order of even date do not suggest that any such request was made before the trial Court that the petitioner is unable to appear due to his illness. The learned trial Court in order dated 09.09.2015 (Annexure P-1 (colly.) available at Pages 29 to 30 of the paperbook) has recorded, reads as follows:-

“No AW is present despite last opportunity. Ld. Counsel for the applicant requested for adjournment which is strongly opposed by Ld. Counsel for the respondents. Heard. Perusal of file shows that while framing issues, applicant was granted only two opportunities to complete his evidence but despite the specific order applicant/defendant examined himself as AW-1 but thereafter he did not turn up to face cross-

examination and even no other witness was examined by him in order to prove the contents of his application after availing two opportunities, as such, no ground is made out to further adjourn the case for the evidence of the applicant and the same is hereby closed by order.”

Counsel for the petitioner is not in a position to state as to what went wrong with the petitioner rendering him unable to tender himself into the witness-box on 09.09.2015 much less the said plea being supported by any medical records. Keeping in view the spirit of order dated 20.03.2015 coupled with the factum that the petitioner has failed to justify his absence from the proceedings on 09.09.2015, I do not find any error much illegality in the impugned order as would call for intervention.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed. No order as to costs.

10.05.2016
yakub

(REKHA MITTAL)
JUDGE