

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

CR No.1029 of 2017 (O&M).

Date of Decision: 14.02.2017.

DSP Real Estate Pvt. Ltd.

....Petitioner.

VERSUS

Sanjeev Kumar Garg and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Shobit Phutela, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-3118-CII-2017

Allowed, as prayed for.

CR-1029-2017

The petitioner-defendant No.3 is aggrieved of the order dated 30.01.2017 passed by learned Civil Judge (Junior Division), Chandigarh dismissing his application for setting aside the exparte order dated 26.08.2011 recorded against him.

The submissions made by Mr. Shobit Phutela, learned counsel for the petitioner have been considered.

It is submitted by learned counsel that the petitioner had no notice of the suit. No summon/notice was served upon him. As soon as he became aware of the pendency of the suit, he filed an application before

application was dismissed assuming that he had knowledge about the pendency of the suit but had intentionally not appeared to contest the suit. Learned counsel contends that the petitioner be given one opportunity to file written statement and produce evidence in support of his pleadings.

The suit was filed in the year 2011. The contention of the petitioner that he had not received any notice of the suit is proved to be wrong by the copy of the order dated 26.08.2011 (Annexure-P3) passed by learned trial Court and produced by the petitioner himself with the instant petition. The order shows that the notice sent to the petitioner-defendant No.3 was received back with the report that when the process server reached at the address given in the summon, the Proprietor of the company met him at the spot and after reading the summon he refused to take the summon himself and asked his official to receive the same on his behalf. The service was held to be valid and the petitioner was ordered to be proceeded against exparte. In the backdrop of said facts, learned trial Court rightly recorded in the impugned order that the petitioner was duly served on 09.08.2011 at his office. It was also observed by learned trial Court that from the written statement filed by other defendants (defendants No.1 and 2), it comes out that the said defendants and the petitioner (defendant No.3) are all co-associates in the real estate business and therefore, it is hard to believe that the petitioner had no knowledge about pendency of the suit.

After lapse of six years when the case reached its fag end, the petitioner moved the instant application for setting aside the exparte proceedings, even though he had notice of its pendency from the very initial stage. Apparently, the application had been filed with a malafide intention

Finding no illegality or perversity in the impugned order passed by learned trial Court, the instant petition for setting aside exparte proceedings against the petitioner-defendant No.3 is dismissed. However, he will be at liberty to join the proceedings in the case at the stage it is now fixed for.

(SNEH PRASHAR)
JUDGE

14.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**