

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2330 of 2016
Date of decision: 27.01.2017

Narinder Singh

... Petitioner

Vs.

Avtar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. A.K. Khubbar, Advocate
for the petitioner.

Mr. C.B. Goel, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 24.02.2016 (Annexure P-7) passed by learned trial Court, whereby application of the petitioner-defendant for setting aside the ex-parte order, was dismissed, defendant No.1 has approached this Court by way of present revision petition.

Notice of motion was issued, subject to payment of costs of Rs.30,000/- to be deposited by the petitioner before this Court and in the meantime, learned trial Court was directed to adjourn the case beyond the date fixed before this Court.

Heard learned counsel for the parties.

Learned counsel for the petitioner submits that petitioner was not going to gain anything in absenting himself from the proceedings before the

learned trial Court. He further submits that although the petitioner remained negligent and filed the application after quite some time, yet the learned trial Court ought to have allowed the said application, permitting the defendant-petitioner to file his written statement to contest the suit. Plaintiffs could have been compensated with reasonable costs. He prays for allowing the present revision petition, by setting aside the impugned order.

On the other hand, learned counsel for the respondents-plaintiffs vehemently contended that the petitioner has been taking the Court for a ride. He was very well aware about the proceedings. He was duly served in the suit. However, he absented himself intentionally from the Court proceedings and thereafter allowed the suit to proceed further. He was not entitled to get the order set aside, whereby he was proceeded against ex-parte, after a long period of about three years. He further submits that plaintiffs have already concluded their evidence and if the present petition is allowed, it will cause manifest injustice to the plaintiffs. He prays for dismissal of the present revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present revision petition deserves to be accepted. The impugned order passed by learned trial Court is liable to be set aside, for the following more than one reasons.

It is the settled proposition of law that the rules of procedure are meant for advancing the cause of justice. It is also the settled proposition of law that the Courts must make an endeavour to decide the lis between the parties on

merits, after granting due opportunity to both the parties to put up their best case before the Court, instead on technicalities. As rightly pointed out by learned counsel for the petitioner that the petitioner was negligent, while not pursuing the case diligently. This was the reason that while issuing notice of motion, this Court directed the petitioner to deposit Rs.30,000/- towards the costs, to be paid to the plaintiffs-respondents.

Nobody should be forced to go home with the grievance that he was not granted due opportunity to put up his case before the Court. It is true that the petitioner has delayed the Court proceedings, which would have been concluded by now. However, it is equally true that ultimately the justice must not be made to suffer for the fault of one of the parties. In case the impugned order is upheld, petitioner-defendant would be deprived from defending himself. Thus, with a view to strike balance for doing complete and substantial justice between the parties, plaintiffs-respondents can be compensated by payment of costs i.e. Rs.30,000/-, which has already been deposited by the petitioner with this Court, in compliance of the order dated 04.04.2016.

Keeping in view the totality of facts and circumstances of the case noticed hereinabove, this Court is of the considered opinion that it is just and expedient to grant one effective opportunity to the petitioner to file his written statement, however, subject to payment of costs of Rs.30,000/- to the plaintiffs.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition deserves to be accepted and the same is hereby allowed. Impugned order dated 24.02.2016 (Annexure P-7) passed by

learned trial Court is set aside. Petitioner shall be granted one effective opportunity to file his written statement, subject to payment of Rs.30,000/- as costs. Since the petitioner has already deposited an amount of Rs.30,000/- with this Court, Registry is directed to release the said amount in favour of the plaintiffs-respondents No.1 and 2 against proper receipt and after due identification of the plaintiffs.

Parties are directed to appear before the learned trial Court on 16.02.2017. On 16.02.2017, learned trial Court shall grant one effective opportunity to the petitioner to file his written statement, adjourning the case to a convenient date. Thereafter, learned trial Court shall proceed further with the case, granting reasonable opportunity to both the parties. However, since the matter is pending for quite some time, learned trial Court is directed to decide the suit as expeditiously as possible.

With the abovesaid observations made and directions issued, instant revision petition stands disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

27.01.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No