

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

**CR No. 6877 of 2014
DECIDED ON: JANUARY 23, 2017**

TARLOK SINGH

.....PETITIONER

VERSUS

SUKHWANT KAUR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Akash Sethi, Advocate for
 Mr. Vipin Mahajan, Advocate
 for the petitioner.

 Mr. Sutikshan Sharma, Advocate
 for respondents No.1 and 2.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of impugned order dated August 11, 2014 (Annexure P-5) passed by learned Additional Civil Judge (Sr. Division), Gurdaspur whereby, judgment and decree dated November 10, 2008 has been set aside but, the petitioner/defendant has not been afforded an opportunity to file written statement as well as “setting aside/quashing of order dated September 26, 2014 (Annexure P-8) ” vide which, an application for recalling the order dated June 04, 2007 (Annexure P-2) striking of the defence of the petitioner/defendant, has been rejected.

Undisputed facts are that an ex-parte judgment and decree dated

November 10, 2008 was passed by learned Additional Civil Judge (Senior Division), Gurdaspur. Subsequently, petitioner/defendant moved an application for setting aside the afore-said ex-parte judgment and decree, which was allowed vide order dated August 11, 2014. The petitioner/defendant was not afforded an opportunity to file written statement. However, subsequent thereto, an application under Section 151 CPC for recalling the order dated June 04, 2007 was moved, whereby, the defence of the petitioner/defendant was struck off, which was dismissed vide impugned order September 26, 2014. In fact the order dated June 04, 2007 deemed to have merged in the order dated August 11, 2014 whereby, judgment and decree, has been set aside. Moreover, it is not the legal proposition of law that the interim orders would remain operative after setting aside the ex-parte judgment and decree.

In view of above, impugned order dated September 26, 2014 (Annexure P-8) is not sustainable in the eyes of law. As such, the same is set aside. Learned trial Court is directed to allow the petitioner to file written statement and then to proceed with the suit in accordance with law. Copy of this order be sent to the concerned Court for compliance.

Accordingly, disposed of.

JANUARY 23, 2017
sham

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No