

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.7253 of 2016 (O&M)

Date of decision:12.1.2017

Balbir Kaur

...Petitioner

Versus

Shakuntla Devi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vikram Preet Arora, Advocate for the petitioner.
Mr.V.P.Singh, Advocate for the respondents

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition is directed against the order dated 19.8.2016 passed by the learned trial Court, whereby application filed by petitioner-defendant No.2 in the civil suit, seeking setting aside ex parte order dated 28.2.2014 was dismissed.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that defendant No.2-petitioner was sought to be served by the plaintiff-respondent through publication in the newspaper (Daily Suraj) and it was not having any wide circulation. Learned counsel for the petitioner has been found well justified in contending that since this newspaper ('Daily Suraj') was not having any circulation in the locality, where the petitioner was residing, she could not come to know about the ex parte order dated 28.2.2014.

When confronted with the above-said fact situation, learned counsel for the respondents had no answer and rightly so, it being a matter of record.

In such an undisputed fact situation, learned trial Court ought to have appreciated that petitioner-defendant No.2 was having a genuine cause, while moving the application, seeking setting aside ex parte order

dated 28.2.2014. However, learned trial Court failed to appreciate this material aspect of the matter in the correct perspective, while passing the impugned order because of which the impugned order cannot be sustained.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice and not for defeating the justice. Every litigating party must be granted due opportunity to put up its case before the court. Nobody should be forced to go home with the grouse that he/she was not granted reasonable opportunity by the learned court of competent jurisdiction. Having said that, this Court feels no hesitation to conclude that since the impugned order has been found suffering from patent illegality, the same cannot be sustained for this reason as well.

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 instant revision petition deserves to be accepted.

Consequently, the impugned order dated 19.8.2016 passed by the learned trial Court is hereby set aside. The order dated 28.2.2014, whereby the petitioner was proceeded against ex parte, is also set aside. Petitioner is granted only three weeks' time to file her written statement. Learned trial Court is also directed to proceed further with the trial, granting due opportunity to the petitioner to lead her evidence at the appropriate stage of the litigation.

Resultantly, with the above-said observations made and directions issued, the present revision petition stands allowed, however, with no order as to costs.

12.1.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No