

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

**CR No.7441 of 2016
Date of Decision: 06.10.2017**

Darshan Singh

.....Petitioner

Vs

Gora Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. H.S. Dhandi, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner is aggrieved of the order dated 12.10.2016 passed by Civil Judge (Junior Division), Patiala whereby application for filing the written statement by the petitioner was declined.

[2]. Defendant No.5/petitioner was proceeded against *ex parte* on 21.03.2013. An application was filed by defendant No.5/petitioner for setting aside the *ex parte* proceedings. He was proceeded against *ex parte* at the initial stage of the suit. The application was allowed by Civil Judge (Junior Division), Patiala vide order dated 08.09.2016. The operative part of the order was to the following effect:-

“4. The defendant No.5 in the present case was proceeded against ex parte on 21.03.2013. Thereafter, an application for setting aside ex parte proceedings was filed by defendant No.5. The defendant No.5 in the present case was proceeded against ex parte at the initial stage. The reasons so mentioned therein are believable to the extent of granting him an opportunity to plead his case and set aside the ex parte proceedings against him. The case is also at initial stage and no prejudice will be caused to the plaintiff if the ex parte proceedings are allowed rather the same would lead to proper adjudication of the case filed by plaintiff. On the other hand, delay so caused by defendant can be compensated with costs. Accordingly, the present application for setting aside ex parte proceedings against defendant No.5 is allowed subject to costs of Rs.1000/-.

5. To come up on 22.09.2016 for cross examination of plaintiff witnesses.”

Announced;
08.09.2016

Shagun
Civil Judge (Jr. Divn.)
Patiala”

[3]. Thereafter, the trial Court vide order dated 22.09.2016 declined the permission for filing the written statement by defendant No.5/petitioner. The order dated 22.09.2016 was to the following effect:-

“An application for permission to file the written statement on behalf of defendant No.5 has been filed. Same is declined. To come up on 03.10.2016 for

plaintiff evidence. Cost be also paid on said date.

(Shagun)

CJJD/PTA/22.09.2016”

[4]. Feeling aggrieved against the aforesaid order, the petitioner filed CR No.6727 of 2016 in the High Court which was allowed on 06.10.2016. The order dated 22.09.2016 was set aside being totally non-speaking in nature. Directions were issued to the trial Court to pass fresh order on the application of the petitioner in accordance with law.

[5]. Thereafter, impugned order dated 12.10.2016 came to be passed declining the permission to file written statement by the petitioner.

[6]. While issuing notice of motion on 08.11.2016, following order was passed:-

“Counsel for the petitioner inter alia contends that the trial Court vide order dated 08.09.2016 allowed application of the petitioner for setting aside the ex parte proceedings by recording the following observations:-

1) The reasons so mentioned therein are believable to the extent of granting him an opportunity to plead his case and set aside exparte proceedings against him.

2) The case is also at initial stage and no prejudice will be caused to the plaintiff if the exparte proceedings are allowed rather the same

would lead to proper adjudication of the case filed by plaintiff.

3) Delay so caused by defendant can be compensated with costs.

It is argued that despite the trial Court making the aforesaid observations and setting aside the ex parte proceedings with an intent to grant an opportunity to the petitioner to plead his case but misdirected itself by disallowing the petitioner to file the written statement. It is further submitted that in case the petitioner is not permitted to file written statement, he can neither plead his case nor can defend the proceedings effectively.

Notice of motion for 14.12.2016 to respondent No.1/plaintiff.

In the meantime, the trial Court shall adjourn the case beyond the date fixed.”

[7]. Evidently, at the time of setting aside the *ex parte* proceedings against the petitioner, it was observed by the trial Court that the reasons mentioned by the petitioner were believable to the extent of granting him an opportunity to plead his case. Pleading of the case included filing of written statement. It can be noticed that the suit at the relevant time was at the initial stage and no prejudice was caused to the plaintiff while setting aside the *ex parte* proceedings against defendant No.5/petitioner. It has been submitted by the learned counsel for the petitioner that now the case is at the stage of plaintiff evidence. It would be just and appropriate to allow defendant No.5/petitioner to have proper opportunity to contest

the suit on merits by filing the written statement. The written statement filed by the petitioner shall be taken on record and thereafter, the trial Court shall proceed to decide the suit on merits in accordance with law.

[8]. Disposed of accordingly.

06.10. 2017

Prince

Whether reasoned/speaking

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No