

Civil Revision No.718 of 2017

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

Sr. No.124

**Civil Revision No.718 of 2017
DECIDED ON: March 02, 2017**

RAKESH KUMAR JIAN

..PETITIONER

VERSUS

JAI HIND JAIN AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Anil Kumar Garg, Advocate,
for the petitioner.

JASPAL SINGH, J.

Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside/modifying of order dated November 21, 2016 (Annexure P-5) passed by learned Civil Judge (Jr. Divn.) Ludhiana vide which though the petitioner has been allowed to join the proceedings but has not been allowed to file the written statement while disposing of an application dated October 03, 2016 (Annexure P-2) filed by the petitioner for setting aside of order dated January 05, 2011 vide which the petitioner was proceeded against ex parte and for setting aside the order dated January 5, 2011 in toto with

further prayer to allow him to file the written statement.

2. After hearing the learned counsel for both the parties and appraisal of the documents on record, an application dated October 03, 2016 (Annexure P-2) filed by the petitioner-Rakesh Kumar Jain was disposed of vide impugned order dated November 21, 2016. The operative part of which reads as under:-

“5. Having heard both the parties this court is of the considered view that is defendant No.13/applicant has failed to show sufficient reasons for his absence on 05.01.2010 and afterwards. The applicant has failed to state as to why present application has been filed after a lapse of 5 years. He has failed to explain as to why he did not approach the court for the 5 years and remained ex parte. Perusal of the judicial file shows that the case is not at which is initial stage. The case is now fixed for defendant evidence. The defendant No.13 had enough time of 5 years to appear before the court earlier but he chose not to appear. It appears that the defendant No.13 intentionally did not appear in the court and have intentionally delayed the proceedings of this case. Therefore, this court do not see any reason to allowed the present application. However, since the defendant No.13 has put up any appearance he is allowed to join the proceedings from now onwards but he is not relegated to the same position to which he was originally entitled if he had not been proceeded ex parte. Written statement by defendant No.13 already on record and the same was filed on 10.11.2017.

6. Keeping in view the aforementioned discussion of mine the present application is hereby disposed of. The case is now adjourned to 05.12.2016 for further cross-examination of DW-1 Pankaj Jain and for remaining defendant evidence subject to last opportunity.”

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3. Though, it has been alleged in the petition that the petitioner has not been allowed to file the written statement. But a glance at the impugned order transpires that the petitioner/defendant No.13 has already filed joint written statement along with respondents No.6, 7, 9 & 10, whereby he has categorically admitted the entire claim of the plaintiffs-respondents. In view of the admitted written statement, he is also not required to adduce any evidence. At the most, he can appear in the witness box as his own witness in support of the written statement already filed by him. Moreover, the suit is at its penultimate. The plaintiffs-respondents have already concluded their evidence and now the suit is listed for evidence of the defendants. In case, an ex parte proceedings/order dated January 05, 2011 is set aside in toto, it would amount to de novo trial which is not permissible at this stage. The order passed by the learned trial court dated November 21, 2016 is absolutely in consonance with the settled canons of law. The impugned order cannot be faulted with. It also cannot be said that it suffers from any infirmity, illegality or perversity. Thus, no interference is justified by this court.

4. In the light of what has been discussed above, instant petition is dismissed, whereby impugned order dated November 21, 2016 is upheld.

5. No order as to costs.

March 02, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**