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

CR No.8487 of 2014

DECIDED ON: JANUARY 24, 2017

RAJ KRISHAN

.....PETITIONER

VERSUS

KAVINDER KUMAR RAJDEV & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. S.C. Sabharwal, Advocate
for the petitioner.

Mr. N.S. Sodhi, Advocate with
Mr. Bharat Rajdev, Advocate
for respondent No.1.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of impugned order dated 21.11.2014 (Annexure P-3) passed by learned Civil Judge (Jr. Division), Fazilka whereby, the application moved under Order IX Rule 7 of the CPC for setting aside the ex-parte proceedings, has been partly allowed to join the proceedings in the civil suit from the present stage.

The contention of learned counsel for the petitioner is that respondent No.1 filed the suit for possession by way of specific performance of agreement to sell dated 03.12.2010 alleged to have been executed by the petitioner/respondent No.1 in favour of defendant in respect of the land measuring 19 kanals, 12 marlas. In fact, the said agreement is forged and

fabricated, and is without consideration. Respondent No.1/plaintiff is a practicing Advocate at Fazilka. In addition to it, he is also running a commission agency and the petitioner used to sell his agricultural produce through his commission agency. In good faith and as a security, respondent No.1/plaintiff obtained the signatures of the petitioner on blank stamp papers and subsequently by converting the same into an agreement to sell, he filed the suit. No doubt, petitioner was served in the suit and initially engaged the counsel to defend the case but since the respondent No.1/plaintiff is a practicing Advocate at Fazilka, his counsel did not appear. As a result whereof, petitioner was proceeded against ex-parte. However, subsequently he was allowed to join the proceedings at the stage of the suit vide impugned order dated 21.11.2014. Petitioner was not allowed to file the written statement as he was only allowed to join the proceedings. The suit was listed for evidence of the respondent No.1/plaintiff. Petitioner could not put up his defence by way of filing written statement, as the ex-parte order/proceedings was not set aside in toto, which has resulted into miscarriage of justice. Thus, the impugned order is not sustainable in the eyes of law and is liable to be set aside. Resultantly, an application moved by the petitioner/defendant No.1 for setting aside the ex-parte order/proceedings dated April 11, 2013 deserves to be accepted.

On the other hand, learned counsel for respondent No.1/plaintiff has argued with vehemence that the petitioner was granted sufficient opportunity by learned trial Court to file the written statement but he did not file the same. It is amply proved on record that petitioner as well as his wife were duly served for November 09, 2012 but either of them did not opt to appear, despite due service. It was only due to the said reason, they were proceeded

against ex-parte on the said date. However, on January 24, 2013 Mr. Parveen Kumar Dhanju, Advocate filed power of attorney on behalf of the petitioner and he was allowed to join the proceedings. Thereafter also the petitioner did not file the written statement, even, though the case was adjourned time and again. Ultimately, neither the petitioner nor his counsel did appear on April 11, 2013 and he was again proceeded against ex-party. Subsequently, on August 26, 2013 petitioner appeared through the same counsel Mr. P.K. Dhanju, Advocate and filed an application, which was disposed of vide impugned order. Petitioner, in fact, did not file the written statement, despite the fact that he was afforded an ample opportunity. Seeing the conduct of the petitioner before learned trial Court vide impugned order, he was just allowed to join the proceedings at the stage for which it was listed. He, accordingly, prayed for the dismissal of revision petition.

This Court has given an anxious thought to the submissions made by learned counsel for the parties and perused the same.

Concededly, petitioner as well as his wife were duly served for November 09, 2012 but they did not opt to appear. As a result whereof, they were proceeded against ex-parte on November 09, 2012. However, they were allowed to join the proceedings, when the petitioner appeared through his counsel on January 24, 2013 and filed power of attorney. Subsequent thereto, he was also allowed to file the written statement but despite availing sufficient time, he slipped away from the proceedings on April 11, 2013. Once again, he was proceeded against ex-parte.

The conduct of the petitioner is suggestive of the fact that he was reluctant in filing the written statement. It is not the case that he was not served

or that he was not afforded an ample opportunity to file the written statement. When an application was moved by him through the same counsel on August 26, 2013 i.e. after about more than 4 months, he was allowed to join at the satge where the suit was listed. The allegation that respondent No.1/plaintiff is a practicing lawyer at Fazilka has nothing to do with the civil suit, especially in the circumstances that the petitioner was being represented by an Advocate.

Thus, this Court does not find any merit in the instant petition.

Accordingly, it stands dismissed.

January 24, 2017

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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>