

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 8867 of 2017(O&M)

Date of decision December 16, 2017

Sandeep

..... Petitioner

Versus

Ramphal

..... Respondent

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. B. S. Ghangas, Advocate for the petitioner.

B.S.WALIA, J (ORAL)

1. Challenge is to order dated 1.12.2017 (Annexure P-5) passed by the learned Civil Judge (Jr.Divn.) Panipat dismissing the application filed for setting aside order dated 5.5.2017 by which the defendant-petitioner (hereinafter referred to as the petitioner) was proceeded ex-parte.

2. During the hearing of the case, Mr. Rajesh Bansal, Advocate put in appearance on behalf of the plaintiff-respondent (hereinafter referred to as the respondent). With the consent of learned counsel for the parties, the case is taken up for final disposal.

3. Brief facts of the case leading to the filing of the instant petition are that the petitioner was served notice for putting in appearance on 2.1.2017 in the suit filed by the plaintiff-respondent. As per the stand of the petitioner, he engaged a counsel to put in appearance on his behalf on 2.1.2017 before the learned Civil Judge (Jr. Divn.), Panipat but the counsel did not put in appearance on his behalf resulting in his being proceeded ex-parte.

4. Application was filed by the petitioner on 15.2.2017 for setting aside ex-parte order dated 2.1.2017. The same was allowed on 6.4.2017 subject to payment of ₹1,000/- as costs and the matter was adjourned to

17.4.2017 for filing of written statement but the same was not filed even on that date. Resultantly, the case was adjourned to 28.4.2017 while giving last opportunity for filing written statement. However, written statement was not filed even on 28.4.2017 as a result of which the case was adjourned to 5.5.2017 for filing of written statement. On 5.5.2017 apart from not filing the written statement, none appeared on behalf of the petitioner resulting in order being passed by the learned Civil Judge (Jr.Divn.) proceeding ex-parte against the petitioner.

5. Learned counsel states that in the aforesaid circumstances, the petitioner engaged another counsel for getting the ex-parte proceedings set aside but said counsel instead of mentioning the correct date of the ex-parte order i.e. 5.5.2017, mentioned a wrong date as a result of which the application for setting aside ex-parte proceedings was dismissed by the learned Civil Judge (Jr. Divn.), Panipat on 30.10.2017. Thereafter a fresh application was filed by the petitioner on 22.11.2017 praying for setting aside of the ex-parte order dated on 5.5.2017. However, the same was dismissed by the learned Civil Judge, (Jr. Divn.), Panipat on the ground that the petitioner was not interested in prosecuting the case but was only delaying the proceedings.

6. Learned counsel for the petitioner contends that the factual position as stated above goes to show that the petitioner was very much interested in prosecuting the case but that he had been let down by the counsel engaged by him and in case, one opportunity was granted to the petitioner on such terms as were deemed just and proper by this Court, petitioner would file the written statement immediately.

7. Per contra, learned counsel for the respondent contended that

the conduct of the petitioner goes to show that he was not interested in prosecuting the case. Learned counsel further contended that in the circumstances, no indulgence was warranted. Learned counsel further contended that in case, the court was inclined to accept the prayer of the petitioner for grant of opportunity to file written statement, then the same should be restricted to grant of one time bound opportunity subject to payment of costs.

8. I have considered the submissions made by learned counsel for the parties and am of the view that although, the petitioner has not been diligent in prosecuting the case but taking into account the position as narrated above, I am of the view that one opportunity be granted to the petitioner for filing written statement otherwise he would not be able to put up a defence.

9. Accordingly, the impugned order dated 1.12.2017 is set aside. Learned Civil Judge (Jr. Divn.), Panipat is directed to grant one opportunity to the defendant-petitioner to file written statement within one week from date of receipt of certified copy of this order subject to his paying ₹15,000/- as costs to the plaintiff-respondent.

10. It is made clear that in case the written statement is not filed within the time granted, no further opportunity shall be granted and the case shall be proceeded with in accordance with law.

11. Revision petition stands disposed of as above.

(B.S.WALIA)
JUDGE

December 16, 2017
archana