

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

**CR No.89 of 2017 (O&M).
Date of Decision: 12.01.2017.**

Ram Kishore

....Petitioner.

VERSUS

Jagannath

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Ashima Mor, Advocate
Legal Aid Counsel for the petitioner.

SNEH PRASHAR, J.

CM-162-CII-2017

Allowed, as prayed for.

CR-89-2017

The instant revision petition has been preferred against the order dated 12.07.2016 passed by learned Additional Civil Judge (Senior Division), Hodal dismissing the application filed by the petitioner for setting aside the exparte order dated 04.04.2013.

A suit for specific performance of the agreement to sell dated 11.06.2009 and 16.06.2010 was filed by the respondent-plaintiff. Copies of orders of learned trial Court annexed with the petition by learned counsel

for the petitioner indicate that notice of the suit as well as application filed

under Order XXXIX Rules 1 and 2 read with Section 151 of the Civil Procedure Code (for short, “CPC”) was given to the petitioner-defendant. He was served with the notice but as he did not put in appearance on 04.04.2013 he was proceeded against exparte. Subsequent to that, the case remained pending till 17.01.2015 on which date the petitioner appeared in person before learned trial Court and filed an application for setting aside the exparte proceedings against him. Numerous opportunities were taken by the respondent to file reply to the application which ultimately was filed on 01.03.2016. Arguments of learned counsel for the parties were heard on 12.07.2016 and the application of the petitioner was dismissed. Aggrieved by the same, the petitioner has filed the instant revision petition.

The submissions made by Ms. Ashima Mor, learned legal aid counsel for the petitioner have been considered.

Learned counsel for the petitioner submitted that the petitioner had met with an accident and was bed-ridden for a long time because of which he could not appear before learned trial Court during the period 04.04.2013 to 17.01.2015. The factum regarding his accident has been endorsed by Sarpanch of the village (Annexure-P2). Submitting that while the application of the petitioner was dismissed by learned trial Court on 12.07.2016, an application for additional evidence under Section 151 CPC filed by the respondent was allowed without any justification on 05.09.2016 and it is apparent from the orders of learned trial Court that till date the respondent has failed to submit arguments for disposal of his case, learned counsel contents that one opportunity be given to the petitioner to contest the suit.

Indeed, there had been an inordinate delay on part of the

petitioner in appearance before learned trial Court as he was proceeded against exparte on 04.04.2013 whereas he appeared on 17.01.2015. However, it is also surprising that for that long period the case remained pending either for evidence of the respondent or for arguments to be submitted on behalf of the respondent. The copies of the orders of learned trial Court annexed with the peititon by learned counsel for the petitioner indicate that repeated adjournments for evidence as well as for advancing arguments were allowed without any justifiable reason. After the petitioner appeared on 17.01.2015 and filed an application for setting aside the exparte proceedings, as many as seven opportunities were taken by the respondent to file reply to the application of the petitioner. After the reply was filed, the case was thrice adjourned for hearing arguments. Ultimately the application for setting aside exparty proceedings was dismissed, but subsequent to that an application for additional evidence filed by the respondent invoking the provisions of Section 151 CPC was allowed. By virtue of the impugned order, the petitioner was not even allowed to join the proceedings.

In the aforesaid circumstances, the order passed by learned trial Court dismissing the application of the petitioner for setting aside exparte proceedings cannot be said to be legal and judicious. It is a case of specific performance of the agreement of sale relating to the property owned by the petitioner. He may have appeared at a late stage, but in the interest of justice there appears no reason to debar him from contesting the suit in order to protect his interest and that will not cause any prejudice to the opposite party.

Accordingly, the impugned order passed by leaned trial Court

is set aside and the instant petition is allowed. The exparte proceedings are

set aside, subject to payment of Rs.2000/- as costs to be deposited by the petitioner with Legal Aid Cell.

(SNEH PRASHAR)
JUDGE

12.01.2017.
jitender sharma

Whether speaking/ reasoned : Yes
Whether Reportable : No