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

**Civil Revision No.331 of 2017 (O&M)
Date of Decision: 18.07.2018**

**M/s Wellgrow Buildcon Pvt. Ltd.,
.....Petitioner**

Vs

**Prithi Singh and another
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Adarsh Jain, Advocate
for the petitioner.

Mr. Amandeep Rana, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has laid challenge to the order dated 04.01.2017 passed by the Civil Judge (Jr. Divn.) Pataudi vide which prayer for setting aside *ex parte* order dated 23.04.2014 and for joining the proceedings from the date of proceeding against *ex parte* was dismissed.

[2]. Notice of motion was issued on 19.01.2017 on the plea of the petitioner that defendant No.2 was contesting the suit from the very beginning and was being represented by the counsel. Thereafter, the case was transferred from Gurgaon to

Pataudi and due to some misunderstanding the counsel could not appear before the Court at Pataudi and the petitioner was proceeded against *ex parte* on 23.04.2014. Evidence of the plaintiff was closed and thereafter evidence of defendant No.1 was also closed on 31.08.2016.

[3]. Petitioner/defendant No.2 moved an application for setting aside the *ex parte* order dated 23.04.2014 on 05.10.2016. The same was dismissed.

[4]. Learned counsel for the petitioner submitted that petitioner is ready to make a statement that he will not ask the plaintiff to produce his witnesses for cross-examination by defendant No.2, but his prayer is that he should be allowed to lead evidence in support of his written statement.

[5]. On the other hand, learned counsel for respondent No.1 has opposed the prayer and referred to the proceedings in the Court at Pataudi. Learned counsel submitted that the proceedings in the Court at Pataudi started w.e.f. 13.01.2013. Defendant No.2 was duly represented before the Court at Pataudi upto 16.02.2014 i.e. for a period of more than one year from 13.01.2013 to 16.02.2014. Thereafter, defendant No.2/petitioner was proceeded against *ex parte* on 23.04.2014. Defendant No.2 was very much in the knowledge of the order,

but application for setting aside the order was filed only on 05.10.2016 i.e. after more than two years and five months of the date of proceeding against *ex parte*. Plaintiff and defendant No.1 have already completed their evidence. The case is fixed for rebuttal, if any and arguments.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. Defendant No.1 closed its evidence on 31.08.2016. Thereafter, defendant No.1 filed an application for granting permission to prove affidavit dated 06.03.2006 by way of secondary evidence. The said application was filed on 10.09.2014. The application was dismissed by the Civil Judge (Jr. Divn.) Pataudi on 07.10.2014. Defendant No.2 was proceeded against *ex parte* during the aforesaid proceedings also.

[8]. Feeling aggrieved against the order dated 07.10.2014, defendant No.1 preferred Civil Revision No.7923 of 2014 in which interim order was passed on 25.11.2014 and the trial Court was directed to adjourn the case beyond the date fixed in the High Court. Ultimately, the aforesaid revision petition was allowed on 30.10.2015. Pendency of aforesaid revision petition cannot be credited to the advantage of defendant No.2, who

remain *ex parte* during the aforesaid proceedings as well.

[9]. Since the case is already fixed for rebuttal and arguments, therefore, at this stage allowing the petitioner to lead evidence would amount to putting the clock in reverse direction. The petitioner never remained vigilant during the proceedings. It has come on record that defendant No.2 was duly represented by an Advocate from 13.01.2013 to 16.02.2014 in the Court at Pataudi. Pendency of the proceedings in the Court at Pataudi cannot be termed without notice of defendant No.2. Those proceedings continued even for more than one year and thereafter, defendant No.2 was proceeded against *ex parte* on 23.04.2014.

[10]. The filing of application for setting aside the *ex parte* order on 05.10.2016 i.e. after more than two years and five months of the date of proceeding against *ex parte* would be highly belated keeping in view the conduct of defendant No.2 in pursuing the litigation in the Court at Pataudi.

[11]. Keeping in view the facts and circumstances of the case, no indulgence can be granted to the petitioner to seek equity at the stage where the plaintiff as well as defendant No.1 have already completed their evidence and the case is fixed for arguments.

[12]. In view of above, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

July 18, 2018

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No