

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

CR No.4360 of 2018

Date of Decision : 12.07.2018.

Naresh Kumar

... Petitioner

Versus

Babu Lal and another

.... Respondents

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

Present: Mr. Manoj K. Tanwar, Advocate for the petitioner.

B.S.WALIA, J.

1. Challenge is to order dated 09.05.2018 (Annexure P-1), whereby the learned Addl. Civil Judge (Senior Division), Mohindergarh, dismissed the application for setting aside ex-parte order dated 28.10.2017 (Annexure P-4).

2. Learned counsel contends that the petitioner-defendant was proceeded ex-parte on account of miscommunication by counsel before the learned trial Court, therefore, application had been moved for setting aside of ex-parte order dated 28.10.2017, but the same was dismissed by the learned trial Court vide order dated 09.05.2018 without considering the matter in the correct perspective.

3. I have heard learned counsel for the petitioner. A perusal of the impugned order reveals that the civil suit was filed by the respondent-plaintiffs on 09.10.2014. Summons were issued to the petitioner-defendant for 04.12.2014, however, the same were received back with report of refusal. Pursuant to said report, the petitioner-defendant was proceeded

against ex-parte and the case was adjourned for ex-parte evidence, in which, eleven witnesses were examined by the respondent-plaintiffs upto 17.12.2015 and the case was adjourned to 25.04.2016 for ex-parte arguments. However, the case remained pending till 25.10.2016 for ex-parte arguments and on said date the petitioner-defendant appeared and moved an application for setting aside ex-parte order. Vide order dated 18.07.2017, the learned Addl. Civil Judge (Senior Division), Mohindergarh, after hearing counsel for the parties, set aside the ex-parte order dated 04.12.2014, passed against the petitioner-defendant subject to payment of costs of ₹2000/-, while making it clear that payment of costs would be a condition precedent for further proceedings. The case was posted for filing written statement and payment of costs for 17.10.2017. On 17.10.2017, costs of ₹2000/- were paid by the petitioner-defendant, but the written statement was not filed. Thereupon the matter was adjourned to 05.09.2017 for filing written statement but on said date written statement was not filed and on request of learned counsel for the petitioner-defendant last opportunity was afforded to the petitioner-defendant for filing written statement and the case was adjourned to 23.10.2017. On said date, again learned counsel for the petitioner-defendant appeared and sought time for filing written statement. The request of learned counsel for the petitioner-defendant was considered and the case was adjourned to 28.10.2017 for filing written statement subject to payment of costs of ₹1000/-. However, on 28.10.2017, neither counsel for the petitioner-defendant nor petitioner-defendant himself appeared before the Court and in the aforementioned

circumstances, the petitioner-defendant was again proceeded against ex-parte.

4. The petitioner-defendant having initially been proceeded ex-parte on 04.12.2014, moved an application for setting aside of ex-parte proceedings only on 25.10.2016 and that too only after eleven witnesses were examined in ex-parte evidence. Apparently, the intention of the petitioner-defendant was to prolong the proceedings of the case. However, even after payment of cost of ₹2000/- in terms of order of the Court dated 18.07.2017, the petitioner-defendant did not act diligently and failed to file written statement promptly. Even after imposition of further cost of ₹1000/-, the petitioner-defendant failed to file the written statement and ultimately failed to put in appearance and was proceeded against ex-parte.

5. In the aforementioned background, I do not find any circumstance warranting interference with the orders passed by the learned trial Court since it is not open to a party to derail the proceedings before a Court of law and to proceed in the matter at its own pace despite having been cautioned by way of imposition of cost not once but twice.

6. Finding no merit in the petition, the same is dismissed in limine.

(B.S.WALIA)
JUDGE

12.07.2018

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No