

(110) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5230 of 2018 (O&M)
Date of decision: 14.08.2018

Gurbax Singh ... Petitioner

Versus

Harminder Kaur Respondent

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

Present: Mr. Prateek Sodhi, Advocate for the petitioner.

B.S. Walia, J. (Oral)

[1] Civil Revision Petition has been filed under Article 227 of the Constitution of India seeking setting aside of order dated 21.04.2018 (Annexure P-5) whereby the learned Civil Judge (Sr. Div.), Amritsar dismissed the application filed by the petitioner for setting aside ex parte proceedings dated 04.04.2016.

[2] Brief facts of the case leading to the filing of the instant revision petition are that earlier the respondent had filed a petition under Section 10 read with Section 25 of the Guardians & Wards Act, 1890 (hereinafter referred to as 'the Act') in the year 2004. In said petition, the petitioner was served through 'munadi' but failed to put in appearance. Subsequently, on bailable warrants being issued, the petitioner caused appearance through counsel and thereafter, moved an application for setting aside the ex parte proceedings ordered against him.

[3] The petition filed by the respondent under Sections 10 and 25 of the Act was eventually dismissed by the learned Guardian Judge, Amritsar vide order dated 15.02.2013, but visitation rights were granted to the respondent-mother. On failure of the petitioner to comply with the order of visitation, the respondent-mother moved an application against the petitioner on 10.05.2013 for initiation of contempt proceedings for non-compliance of order dated 15.02.2013. The petitioner appeared in the said proceedings before the learned Civil Judge (Sr. Div.), Amritsar on 16.07.2013 but filed written statement only after a delay of 8 months i.e. on 24.03.2014. After framing of issues, the respondent examined PW-1 and PW-2 on 19.01.2016 and the matter was adjourned to 15.03.2016 for cross-examination of said witnesses. However, although on said date, the witnesses were present for their cross-examination but counsel for the petitioner sought an adjournment which was granted and the case was adjourned to 04.04.2016 for cross-examination of PW1 and PW2, subject to payment of costs of ₹ 500/-. On 04.04.2016, witnesses were again present for their cross-examination but none turned up on behalf of the petitioner to cross-examine them, therefore, the case was ordered to be called after lunch for cross-examination of the witnesses, but again none appeared on behalf of the petitioner. Consequently, the Court proceeded ex parte against the petitioner.

[4] After close to about one year after being proceeded ex parte, the petitioner moved an application on 27.03.2017 for setting aside of ex parte proceedings dated 04.04.2016 on the ground that on 20.03.2017, on inspection of file in routine it was learnt that he had been proceeded

against ex parte on 04.04.2016. The application further mentioned that dates were being noted on the brief by the petitioner, his counsel as well as Clerk of his counsel that he had been appearing in the Court; and that the ex parte proceedings were initiated against the petitioner inadvertently and since dates were being noted on the brief by the Clerk of the counsel, the petitioner could not be made to suffer on account of mistake on the part of the Clerk of the counsel.

[5] Learned Civil Judge (Sr. Div.), Amritsar dismissed the application on the ground that the stand of the petitioner was self-contradictory and an abuse of the process of law. Admittedly, the petitioner in paragraph No.3 of the application stated that he, his counsel as well as Clerk of his counsel remained noting the dates and proceedings by appearing in Court. However, in paragraph No.5 of the application, the petitioner stated that he could not be made to suffer on account of mistake on the part of Clerk of the counsel. The petitioner nowhere stated in the application that it was not in his knowledge or that he or his counsel were not aware that an adjournment had been taken on his behalf for cross-examination of PW-1 and PW-2 on 15.03.2016 which was granted for 04.04.2016 for the cross-examination of PW-1 and PW-2 subject to payment of costs of ₹ 500/- but none appeared on behalf of the petitioner to cross-examine the witnesses on 04.04.2016 nor paid the costs. It was in the aforementioned circumstances that the petitioner was proceeded against ex parte. The petitioner nowhere mentioned in the application that he never noted 04.04.2016 as the date for cross-examination of PW-1 and PW-2. In the circumstances, the petitioner cannot conveniently plead innocence of the proceedings dated

15.03.2016, 04.04.2016 and thereafter, till 20.03.2017 on which date he claims to have come to know of having been proceeded against ex parte on 04.04.2016 on inspecting the file.

[6] The story as set up by the petitioner is merely a concoction in order to make out a case for setting aside of the ex parte proceedings ordered against the petitioner. In fact, the conduct of the petitioner shows a deliberate plan to delay the adjudication of the matter as part of a well planned strategy to defeat the visitation rights granted to the respondent-mother namely Harminder Kaur qua her son Ramandeep and to prevent her from meeting the child for years. In fact the Hon'ble Division Bench while dismissing the appeal (i.e. FAO No.2383 of 2013 titled as Gurbax Singh vs Harminder Kaur) filed by the petitioner, on 05.08.2014 observed that the respondent, being the mother of the child Ramandeep, had a right to meet him for which visitation rights had been granted to her and that the said right was not at all on the higher side and that she could not be deprived entirely of even meeting the child and that in the circumstances, the trial Court had passed a well-reasoned order regarding visitation rights of the mother. It was further observed that the petitioner-father should play a positive role and try to convince and persuade the child in the right way so that he was comfortable meeting his mother and that any bitterness between the parties on account of failure of the matrimonial alliance, should not come in the way and the petitioner-father should encourage the child to meet his mother as per the directions of the Court so that the child was not deprived of the love of one of the parents in totality and that in any case the arrangement for visitation rights of the respondent was to be continued till the child attained the age

of majority on 14.05.2017. Thus, it is clear that the petitioner opposed the visitation rights granted to the respondent-mother by the Guardian Judge, Amritsar vide order dated 15.02.2013 before Hon'ble the Division Bench in the aforesaid appeal (i.e. FAO No.2383 of 2013) by taking up the plea that the child did not even recognize his mother and had refused to meet her and that none of the parties could compel the child to meet the mother but since there was a direction by the Court, the petitioner-father was bound to hand over the custody of the child to the respondent against the wishes of the child. However, the plea of the petitioner-father was rejected.

[7] A perusal of the facts of the case as noted above reveal that the petitioner as part of a well thought-out strategy to deprive the respondent of visitation rights granted to her for meeting her son Ramandeep, opposed the visitation rights granted by the learned Guardian Judge, Amritsar vide order dated 15.02.2013 and on the respondent initiating proceedings against the petitioner for securing compliance of order dated 15.02.2013, appeared on 16.07.2013 but filed reply to the application only on 24.03.2014 i.e. after a delay of eight months, thereafter obtained an adjournment on 15.03.2016 for 04.04.2016 to cross-examine PW-1 and PW-2, subject to payment of costs of Rs.500/- but neither cross-examined PW-1 and PW-2 nor paid the costs nor put in appearance in the case on 04.4.2016 and thereafter, kept on noting the dates but conveniently pleaded having come to know on 20.03.2017 of having been proceeded against ex parte on 04.04.2016.

[8] I have heard learned counsel for the petitioner at length and am satisfied that non-appearance of the petitioner on 04.04.2016 was

deliberate, part of a well thought-out strategy and the plea as set out in the application seeking setting aside of ex parte proceedings is totally false, therefore, no case is made out for setting aside the ex parte order dated 04.04.2016 nor is any case made out for setting aside order dated 21.04.2018 passed by the learned Civil Judge (Sr. Div.), Amritsar dismissing the application for setting aside ex parte proceedings dated 04.04.2016. The petitioner has misused the process of law. This is a fit case for imposing exemplary costs, however, since the petition is being dismissed in limine, therefore I refrain from doing so.

[9] Needless to mention, in view of the apprehension expressed by learned counsel for the petitioner, it is clarified that notwithstanding the dismissal of the revision petition for setting aside of the impugned order, the petitioner would be at liberty to participate in the proceedings in the manner as laid down in the decision of Hon'ble the Supreme Court in **Om Parkash versus Amarjit Singh and another 1988 (3) Judgments Today 72**. Relevant extract of the same is reproduced as under:

"Dealing with Order IX rule 7 of the code, he said that if a party is allowed to appear then, unless good cause is shown under Order IX, rule 7 for the earlier non-appearance, the proceedings must continue from the stage at which the later appearance is entered, and the party so appearing cannot be relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings i.e. he has no right to set back the hands of the clock. All that it means is that he must accept at that has gone before and be content to proceed from the stage at which he has come in. See also : **Arjun Singh v. Mohindra Kumar & Ors. (1964) 5 SCR 946**. In the present case, the appellant having failed to show good cause under Order IX rule 7 for the earlier non-appearance, the proceedings must continue from the stage at which the later appearance was entered and obviously, he could not be relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings. But he certainly had the right of participation in the proceedings, to cross-examine the plaintiff or his witnesses and if necessary, to lead evidence in rebuttal. The failure of the learned Subordinate Judge to afford him an opportunity to do so virtually was tantamount to denial of justice."

[10] Accordingly, the Revision Petition is dismissed in the light
of the observations as noted above.

14.08.2018
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(B.S. Walia)
Judge

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No