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

**Civil Revision No.5538 of 2017
Date of Decision: 22.10.2018**

ASHOK KUMAR

.....Petitioner

Vs

**PARAM HANS SWAMI UMA BHARTI MISSION REGD AND
ORS**

....Respondents

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

Present: Mr. Rajesh K. Kataria, Advocate
for the petitioner.

Mr. Pritam Saini, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 12.05.2017 passed by the Civil Judge (Sr. Divn.) Rewari vide which application for setting aside the *ex parte* order dated 18.02.2013 was dismissed.

[2]. Brief facts are that the petitioner is defendant No.2 in the suit for declaration and permanent injunction. An application was filed by defendant No.2/petitioner under Order 7 Rule 11 CPC. The issue in respect of court fee went upto the Hon'ble Apex Court in SLP(C) No.36824/2012 which was ultimately decided on 07.04.2017, wherein it was agreed between the

parties that the issue of valuation of suit be decided as preliminary issue.

[3]. Perusal of the record would show that defendants No.2 and 4 were proceeded against *ex parte* vide order dated 18.02.2013 in the proceedings for consideration of application under Order 7 Rule 11 CPC. The said order was not assailed for more than four years. After decision of SLP(C) No.36824/2012 on 07.04.2017, the application for setting aside the *ex parte* order dated 18.02.2013 came to be filed only on 09.05.2017. In the said application, the trial Court has recorded that the case has reached upto the stage of rebuttal and arguments as there was no stay of proceedings by any Court. The trial Court vide the impugned order dismissed the application however, permitted the petitioner to join the proceedings of the case which was pending before the trial Court. The said order has been challenged in the present revision petition.

[4]. Perusal of the record would further show that earlier defendant No.4 Subhash Chand Sharma filed an application for setting aside the *ex parte* order dated 18.02.2013 and the same was dismissed on 26.08.2016 by the trial Court. Thereafter, the present application was filed by the petitioner Ashok Kumar through his GPA Krishan Kumari, who is wife of defendant No.4 and real sister of the petitioner. The factum of earlier application

filed by defendant No.4 for setting aside the ex parte order dated 18.02.2013 was noticed in the impugned order and filing of second application was held to be a *mala fide* exercise on behalf of the petitioner.

[5]. The issue of court fee at this stage can be appreciated by the trial Court and a contingent decree can be passed. During the intervening period from 18.02.2013 to 07.04.2018, there was no stay of proceedings passed by any Court and in the meanwhile, the suit has reached upto the stage of rebuttal and arguments. Issue of court fee is between the plaintiff and the Court. In case the trial Court finds that the Court fee is payable by the plaintiff, the plaintiff can be asked to make good the court fee by way of passing a contingent decree.

[6]. It appears that under the garb of present revision petition, the petitioner seeks to lead evidence over and above the scope of court fee, which in any case will be taken care of by the trial Court at the time of decision of the suit on merits.

[7]. In view of aforesaid, the impugned order does not suffer with any error of jurisdiction. This revision petition is accordingly dismissed.

October 22, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No