

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Revision No.6382 of 2017

Date of Decision: April 03, 2018

Anita Devi

...Petitioner

Versus

Kamal & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.Sudhir Rana, Advocate,  
for the petitioner.

Mr.Sumit Sangwan, Advocate,  
for respondent No.1.

Mr.Gopal Sharma, Advocate,  
for respondent No.3.

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**AMIT RAWAL, J. (Oral)**

The present revision is directed against the order dated 30.5.2017 (Annexure P-1), whereby the application submitted by the petitioner for setting-aside the ex-parte proceedings, has been dismissed.

Mr.Sudhir Rana, learned counsel representing petitioner-defendant No.3 submitted that respondent No.1-plaintiff filed a suit for permanent injunction against the defendants, which had been dismissed and, therefore, the proceedings under Order 39 Rule 2-A CPC cannot be permitted to be initiated. The application was moved on 23.3.2016. The petitioner was not aware of the aforementioned proceedings and only aware of the pendency of the suit which was pursued as the counsel did not inform that application under Order 39 Rule 2-A CPC was pending. No hardship would be caused in case the application is ordered to be decided on merits.

Mr.Sumit Sangwan, learned counsel for respondent No.1-plaintiff submitted that the application under Order 39 Rule 2-A CPC would

be maintainable even if the suit had been dismissed, but the fact of the matter is that no explanation has come forward in not moving the application with promptitude. The explanation given in the application is bereft of reasoning as each and every day's delay is conspicuously wanting and, thus, prayed for affirming the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioner, for, the explanation given in the application for setting-aside the ex-parte proceedings is that the same was adjourned along with the suit. It is in that background of the matter, the petitioner did not know about the ex-parte order dated 20.1.2015. The Court should have adopted a pragmatic and reasonable approach in permitting the petitioner-defendant in defending the application alleging violation of the interim order.

Without commenting with regard to the maintainability of the application under Order 39 Rule 2-A CPC, which is subject matter of the decision by the trial Court, I am of the view that the order under challenge is not sustainable, for, petitioner should have been permitted to join the proceeding under Order 39 Rule 2A CPC for proper and effective adjudication. The same is hereby set-aside. The ex-parte proceedings against the petitioner are set-aside. She is permitted to join the proceedings and contest the same in accordance with law.

Revision petition stands allowed.

**April 03, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**  
**Whether Reportable:**

**Yes/No**  
**Yes/No**