

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6925 of 2018

Date of Decision: 30.10.2018

Paramjit Singh

.....Petitioner

Vs.

Balwinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Kanwar Pahul Singh, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned trial Court [Civil Judge (Junior Division), Ajnala], dated 07.08.2018, by which the application filed by respondent no. 1 (defendant no. 2 in the suit) under Order IX Rule 7 CPC, has been allowed, thereby allowing him to now defend the case, he having been earlier proceeded against *ex parte*.

A perusal of the impugned order shows that after the said respondent no. 1-defendant no. 2 had been proceeded against *ex parte* on 16.11.2015, the suit of the petitioner-plaintiff was dismissed on 30.07.2016.

Aggrieved of that judgment and decree, the petitioner filed an appeal and during the course of that appeal, he also filed an application under Order VI Rule 17 CPC seeking to amend the plaint itself.

That application having been allowed by the appellate Court, the suit was remanded to the trial Court for hearing it afresh.

Thereafter, the application of respondent no. 1-defendant no. 2 seeking the setting aside of the order proceeding against him *ex parte* on

16.11.2015 was filed.

Learned counsel for the petitioner points to Order IX Rule 7 of the CPC, which reads as follows:-

“Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance--- Where the Court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

His contention therefore is that the application under Order IX Rule 7 not having been filed by respondent no. 1-defendant no. 2 prior to the next date of hearing after he was proceeded against *ex parte*, the application could not have been allowed.

Having heard learned counsel for the petitioner, I see no reason to interfere with the impugned order, by which the reasoning given by the respondent no. 1, that he was suffering from some liver disorder, has been rejected on the ground that the said problem relates to the year 2012 and not 2015; but thereafter, holding that no one should be condemned unheard, the application was allowed.

Therefore, while dismissing this petition, this Court needs to observe that once the application of the petitioner under Order VI Rule 17 CPC was allowed by the appellate Court, thereby taking on record his amended plaint and the matter was remanded to the trial Court for a fresh hearing thereupon, even natural justice demanded that notice be issued to the defendants, including the defendant proceeded against, *ex parte*, after which, when the defendant so proceeded against applied for setting aside the order passed *ex parte* prior to the

matter having been remanded to the trial Court, the application in fact deserved to be allowed.

Consequently, this petition is dismissed in *limine*.

October 30, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes