

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

**Civil Revision No.7984 of 2016 (O&M)
Date of Decision:06.08.2018**

**DLF Pramerica Life Insurance Co. Ltd.
.....Petitioner**

Vs

**M/s Dev Comptech Pvt. Ltd.,
....Respondent**

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

Present:Mr. Karan Nehra, Advocate
for the petitioner.

Mr. S.K. Verma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the orders dated 26.09.2016 and 19.03.2014 passed by the Civil Judge (Sr. Divn.) Gurugram.

[2]. Brief facts of the case are that vide order dated 19.03.2014, defendant/petitioner was proceeded against *ex parte* and the case was adjourned for consideration on 01.05.2014. Vide order dated 26.09.2016, the application filed by the defendant/petitioner for setting aside the *ex parte* order dated 19.03.2014 was dismissed.

[3]. Plaintiff/respondent filed a suit for recovery under Order 37 CPC against the defendant/petitioner. Petitioner/defendant could not appear in time and appeared before the Court after ten days. He filed application under Order 37 Rule 3 Sub Rule 7 CPC for condonation of delay of 10 days in entering appearance.

[4]. Plaintiff/respondent filed reply to the aforesaid application and the same is still pending.

[5]. During pendency of the aforesaid application, defendant/petitioner was proceeded against *ex parte* on 19.03.2014. Perusal of the record would show that despite the defendant/petitioner being proceeded against *ex parte* on 19.03.2014, presence of learned counsel for the defendant was marked in the presence memo dated 02.12.2015, 19.01.2016, 07.04.2016, 23.05.2016, 21.07.2016, 05.08.2016, 05.09.2016, 15.09.2016, 22.09.2016 and 04.10.2016.

[6]. At the time of issuance of notice of motion on 28.11.2016 following order was passed by the Co-ordinate Bench of this Court:-

“Counsel for the petitioner inter alia contends that though vide order dated 19.03.2014, the petitioner has been proceeded against ex parte but the trial Court till date has not decided his application for condoning delay of 10

days in putting in appearance in pursuance of the summons issued under Order 37 of the Code of Civil Procedure. It is further submitted that even though the petitioner has been proceeded against ex parte, it has right to join the proceedings at this stage.

Notice of motion for 06.03.2017.

In the meantime, the petitioner shall deposit Rs.15,00,000/- with the trial Court within a period of one month.

On necessary deposit being made, the same shall be converted into a fixed deposit payable to the successful party.

After necessary deposit being made, further proceedings before the trial Court shall remain stayed.”

[7]. In compliance to the aforesaid order, learned counsel for the petitioner has placed on record the copy of order dated 09.12.2016 passed by the Civil Judge (Jr. Divn.) Gurugram whereby the defendant/petitioner has deposited cheque No.054929 drawn from HDFC Bank in a sum of Rs.15,00,000/- before the trial Court and the same was taken on record.

[8]. Order 37 Rule 2 CPC deals with institution of summary suits. The summons of the suit have to be issued to the defendant in Form No.4 as shown in Appendix B. The defendant cannot defend the suit as referred to in sub-rule(1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the

amount in question. No such order was passed by the trial Court.

[9]. Order 37 Rule 3 CPC prescribes for the procedure for the appearance of the defendant. In the event of service of summons upon the defendant under Rule 2 of Order 37 CPC in the prescribed form, the defendant may at any time within ten days of such service enter an appearance either in person or by a pleader and in either case, he shall file in Court an address for service of notice on him. If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summon for judgement in Form No.4-A in Appendix B or such other form as may be prescribed from time to time returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action, amount claimed and stating that in his behalf, there is no defence to the suit. Further defendant may at any time, within ten days from the service of such summons for judgment by affidavit by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend the application on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally and upon such terms and conditions as may appear to the Court to be just and proper.

[10]. Evidently, the procedure as given in Order 37 Rule 3

CPC and its sub-Rules has to be complied with after compliance of Order 37 Rule 2 CPC and its sub-Rules. The requirement of Order 37 Rule 2 CPC is that the summons of the suit shall be in Form No.4 in Appendix B. The failure of the defendant in entering appearance within ten days would have enabled the trial Court to pass a decree. No such decree was passed by the trial Court, thereafter the procedure given in Order 37 Rule 3 CPC is somewhat different. Under this Rule, defendant on appearance at any time within ten days of such service shall file in Court an address for service of notice on him. If, the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summon for judgment in Form No.4-A in Appendix B or such other form as may be prescribed from time to time returnable not less than 10 days from the date of service supported by an affidavit, verifying the cause of action and the amount claimed and stating that in his behalf, there is no defence to the suit.

[11]. As per sub-Rule 7, Rule 3 of Order 37 CPC, the Court can condone the delay in entering appearance by the defendant. Evidently, the trial Court did not pass any decree on failure of the defendant in not causing appearance within 10 days in terms of Order 37 Rule 2 CPC that ultimately permitted the defendant to file the application under sub-Rule 7, Rule 3 of

Order 37 CPC. The said application is pending consideration before the trial Court. Instead of passing the required order, the trial Court proceeded to pass the order dated 19.03.2014 vide which defendant/petitioner was proceeded against *ex parte*. Subsequent orders passed by the trial Court showed that the presence of learned counsel for the defendant was marked.

[12]. In the light of observations made by this Court in **Sat Pal Singh vs. Harjit Singh, 1998(2) I.L.R, Punjab and Haryana, 149**, the trial Court was required to examine the stand of the defendant as to find out whether the facts stated in the application indicate that he has a substantial defence to raise or the defence put up by the defendant was frivolous or vexatious. In the event of not causing appearance by the defendant, the trial Court would have resorted to pass the decree, but having not done so, the Court was under obligation to decide the application for condonation of delay in not appearing before the Court within 10 days. Instead of passing the said order, the Court proceeded to pass the order vide which defendant was proceeded against *ex parte*. Even though the application for setting aside the *ex parte* order dated 19.03.2014 was filed on 19.01.2016, but the plaintiff also kept on seeking adjournments as per interlocutory orders placed on record.

[13]. The cause of justice cannot be thrown at the verge of

technicality. Evidently, the application under Order 37 Rule 3 Sub Rule 7 CPC is still pending. Defendant has already deposited the requisite amount as per order dated 28.11.2016 passed by this Court.

[14]. In view of aforesaid, the impugned orders dated 26.09.2016 and 19.03.2014 passed by the Civil Judge (Sr. Divn.) Gurugram are set aside. This revision petition is allowed. Defendant/petitioner is entitled to join the proceedings. The amount so deposited under the orders of the Court shall be kept intact in view of directions issued by this Court vide order dated 28.11.2016. The trial Court is also directed to decide the application under Order 37 Rule 3 Sub Rule 7 CPC in accordance with law.

August 06, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No