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

**Civil Revision No.7753 of 2017  
Date of Decision: 23.08.2018**

**Tarlok Chand**

**.....Petitioner**

**Vs**

**Kailash Chander**

**....Respondent**

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

Present: Mr. Rajiv Joshi, Advocate  
for the petitioner.

Mr. Manish Saini, Advocate  
for the respondent.

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**RAJ MOHAN SINGH, J. (Oral)**

[1]. Petitioner has assailed the order dated 21.10.2017 passed by the Addl. Civil Judge (Sr. Divn.) Phillaur vide which the application for setting aside the *ex parte* proceedings dated 17.11.2016 passed by the Civil Judge (Jr. Divn.) Phillaur was dismissed.

[2]. Perusal of the record would show that on 17.11.2016, none appeared on behalf of the defendant and the trial Court passed the following order:-

*“Today none have come present on behalf of defendant. Case called several times since morning, before lunch and after lunch. But none has come present on*

*behalf of defendant. It is already 4.00 PM, court time is going to be over. As such the defendant is proceeded against ex parte. Now to come up on 20.12.2016 for ex parte evidence of plaintiff.”*

[3]. Evidently, the aforesaid order was passed vide which the defendant was proceeded against ex parte and the case was adjourned for ex parte evidence of the plaintiff. The defence of the defendant was not struck off, but the import of aforesaid order can be taken to be that the defence of defendant was struck off. Thereafter, ex parte evidence of the plaintiff started w.e.f. 20.12.2016.

[4]. Presence of learned counsel for the defendant was marked in all the interlocutory orders dated 20.12.2016, 27.02.2017, 28.03.2017, 20.04.2017 and 11.05.2017 when one PW-1 Kailash was examined and on 13.07.2017 when PW-2 Bahadar was examined. Even on 13.09.2017 and 26.09.2017 presence of learned counsel for the defendant was marked.

[5]. The application for setting aside the ex parte proceedings dated 17.11.2016 came to be filed after ten months of the aforesaid order. The ground for setting aside the ex parte proceedings was that the applicant went to Delhi to attend marriage of his relative, therefore, factum of passing ex parte orders was not known to the applicant.

[6]. It is true that there is an omission on the part of

defendant in pursuing his remedies. At the same time, it can be noticed that the impugned order dated 17.11.2016 was also deficient in terms of striking off defence of the defendant in the event of his non-appearance on the date fixed. Fixing of case for ex parte evidence of the plaintiff would necessary entail in striking of defence of the defendant, but no such observation was made by the trial Court, therefore, the said order is totally non-speaking.

[7]. Perusal of the record would also show that 17.11.2016 was the single default on the part of defendant in not appearing before the trial Court. Earlier to the aforesaid date and subsequent thereto, the defendant was appearing in the Court.

[8]. In considered opinion of this Court, the impugned order dated 17.11.2016 passed by the trial Court on single default in not appearing in the Court on 17.11.2016 is quite harsh. At the same time the filing of application after ten months of passing of the said order is also an act of glaring omission on the part of the defendant.

[9]. Learned counsel for the defendant remained present in the Court on 11.05.2017 and 13.07.2017 when PW-1 and PW-2 were being examined in-Chief. No effort was made by learned counsel for the defendant to cross-examine the witnesses or to file an application for setting aside the ex parte proceedings.

[10]. After due consideration of the entire controversy, I find that the order dated 17.11.2016 is deficient in terms of legal requirement, but at the same time conduct of the defendant is also found to be lacking in terms of not pursuing the remedy in a bona fide manner.

[11]. In view of above, I deem it appropriate to give one opportunity to the defendant subject to payment of heavy costs of Rs.50,000/- to be paid to the plaintiff/respondent. Consequently, the impugned orders are set aside. This revision petition is allowed. Normal consequences to follow.

[12]. The payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

August 23, 2018

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No