

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

C.R.No.8920 of 2017 (O&M)

Surjit Singh

....Petitioner

Versus

Geetu Bakshi and Ors.

....Respondents

Date of Order: 17.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Jaswal, Advocate for the petitioner.

Mr. Shekhar Verma, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

This revision petition is directed against the impugned order dated 19.8.2017 passed by Civil Judge (Jr. Division), Mukerian whereby the application filed by the petitioner-defendant No.39 for setting aside ex parte proceedings and permitting him to file written statement to the amended plaint has been dismissed.

Facts of the case are that the respondent-plaintiff filed the suit challenging the sale deed dated 20.9.1994 and the petitioner was arrayed as defendant No.39 in the said suit. During the pendency of the suit, respondent-plaintiff moved an application for amendment of the plaint for challenging the sale deed dated 28.7.1995 executed by defendant No.1 in his favour. Said amendment application was allowed by this Court in CR No.1857 of 2012. Amended plaint was filed on 19.3.2016. The contesting respondent filed amended written statement on 31.3.2016 but the trial Court without issuing notice qua amendment of the plaint to other respondents, proceeded them ex parte and the case was posted for plaintiffs' evidence.

On 11.11.2016, an application (P.3) was moved for setting aside the ex parte proceedings but the same was dismissed vide order dated 17.12.2016 (P.5). Thereafter the plaintiffs' evidence was closed on 20.3.2017 whereas contesting respondents closed the evidence on 31.3.2017.

Learned counsel for the petitioner submitted that the trial Court has gravely erred while passing the impugned orders, for, a valuable right had accrued in favour of the petitioner-defendant No.39 to contest the suit in view of amendment of the plaint. He submitted that in case this Court grants an opportunity to file the written statement, the same shall be filed immediately without delaying the adjudication of the trial.

Per contra, learned counsel for respondent No.1 submitted that the order dated 17.12.2016 was challenged by the petitioner by filing CR No.479 of 2017 but the same was withdrawn vide order dated 19.7.2017 (P.6). No explanation has been tendered for moving the second application on 03.8.2017 for setting aside the ex parte proceedings, which was not maintainable. Though, the said application was contested by filing reply (P.8). He submitted that even thereafter another application was preferred under Order 9 Rule 7 CPC, which has been dismissed vide the impugned order dated 19.8.2017. The conduct of the petitioner-defendant is writ large as the suit is being delayed on one pretext or the other, thus he prayed for dismissal of the revision.

I have heard learned counsel for the parties and appraised the paper book. The facts as noticed above are not in dispute. Filing of the original plaint without claiming any relief against the petitioner-defendant No.39 is also not disputed. Concededly, the revision petition bearing CR No.1857 of 2012 was filed by the respondent-plaintiff for amendment of the

plaint which was allowed by this Court on 11.1.2016.

Under these circumstances, the petitioner-defendant moved the application for contesting the suit by setting aside the ex parte proceedings. No doubt much time has lapsed during the interregnum but the Court cannot shut his eyes and prevent the party from contesting the suit in such a manner otherwise it would prejudice the right of the petitioner-defendant. All the factors, in my view, should have been examined by the trial Court by putting certain terms and conditions.

Resultantly, present petition is allowed subject to payment of Rs.10,000/- as costs, which shall be a condition precedent. Impugned orders are set aside and the petitioner-defendant No.39 is granted an opportunity to file the written statement on the adjourned date i.e 21.5.2018. Thereafter, the respondent-plaintiff shall examine two witnesses in support of the plaint for the purpose of cross examination on the date fixed by the trial Court. After undertaking this exercise within a period of 45 days, the petitioner-defendant No.39 shall be granted one month's time to lead evidence in support of his defence in the written statement. It is made clear that other defendants, who already appeared, filed written statement or served but not appeared and cross examined plaintiff witnesses, shall not be given any chance to seek recalling of the witnesses as it would seriously affect the right of the plaintiff.

The trial Court shall expedite the suit as early as possible, preferably within a period of six months.

May 17, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No