

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

**CR No.2709 of 2017(O&M)
Date of Decision: 05.03.2019**

Sub Divisional Engineer

.....Petitioner

Versus

Tarsem Chand and others

.....Respondents

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

Present: Mr. Deepak Goel, Advocate for
Mr. Vivek Goel, Advocate
for the petitioner.

Mr. Surinder Garg, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this revision petition against the order dated 06.10.2016 passed by Additional Civil Judge (Senior Division), Baghapurana, District Moga vide which the application filed by the petitioner/defendant No.5 for setting aside the order dated 03.05.2016 was dismissed.

[2]. In a suit for recovery filed by the petitioner, defendants No.1 to 5 were proceeded against ex parte on 19.05.2016 (in fact the order was passed on 03.05.2016). All the defendants were distinctly arrayed with no super-imposing configurations.

Only defendant No.5 filed an application under Order 9 Rule 7 read with Section 151 CPC for allowing the defendants to contest the suit on merits by setting aside the order dated 19.05.2016.

[3]. Perusal of order dated 03.05.2016 will give the following reading:-

“Present:- Sh. Satish Kumar Jain, Adv. counsel for the plaintiff.

Defendants No.1 to 5 have not come present despite service. Case called several time. It is already 3:30 PM. So, they are proceeded against ex parte. Now to come up on 19.05.2016 for ex parte evidence.

Sd/

Amit Kumar Garg, PCS,
ACJ (SD), Baghapurana,
03.05.2016.”

[4]. While filing the application under Order 9 Rule 7 CPC, following pleadings have been made in para Nos.2, 3 and 4:-

2. That in this case the applicant himself and on behalf of defendant No.1 to 4 appeared before this Hon'ble Court on 03.05.2016.

3. That as the case of the plaintiff is against the 'State' and to litigate the cases involving State, the permission for the same is to be necessary to litigate the same. In this case the applicant had not possessed with the necessary permission from the State and the applicant

requested to the Hon'ble Court to give him some time to get the permission from the State. The Hon'ble Court by accepting the request of the applicant adjourned the date for appearance of the defendants for 19.05.2016.

4. That again when upto that date 19.05.2016 the applicant could not get the permission of the State due to the rush of the office work and again on 19.05.2016 the applicant requested to the Hon'ble Court to grant him some more time for the same but the Hon'ble Court rejected the request of the applicant and passed the ex parte orders against the defendants.”

[5]. It appears from the pleadings in para Nos.3 and 4 that defendants were proceeded against ex parte on 19.05.2016 but the pleadings are contrary to the order dated 03.05.2016, wherein it was clearly recited that the defendants were proceeded against ex parte on 03.05.2016 and thereafter, case was adjourned to 19.05.2016 for ex parte evidence. In the aforesaid pleadings also, the factum of petitioner having no authority on behalf of defendants No. 1 to 4 has been specially pleaded by the petitioner. No authority/authorization has been placed on record even in the present revision petition to appear on behalf of defendants No.1 to 4. In such situation, defendants No.1 to 4 have accepted the nature of proceedings undertaken against them.

[6]. It is only defendant No.,5 who has tried to espouse the cause on behalf of defendants No. 1 to 4, which in my

considered opinion cannot be allowed. Pleadings in para Nos.3 and 4 of the application appear to be deceptive in view of order dated 03.05.2016 vide which defendants were proceeded against ex parte.

[7]. In view of above, the present revision petition is dismissed.

05.03.2019	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No