

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

**CR No.4837 of 2018(O&M)
Date of Decision: 05.02.2019**

Municipal Council Rewari

.....Petitioner

Versus

Bimla Devi and others

.....Respondents

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

Present:Mr. M.K. Verma, Advocate
for the petitioner.

Mr. Kul Bhsuhan Sharma, Advocate
for respondent No.1

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 20.02.2018 passed by Civil Judge (Junior Division), Rewari vide which application for setting aside the *ex parte* order dated 02.01.2017 was dismissed.

[2]. Perusal of the record would show that on 23.12.2016, the suit was received by assignment. After perusal of the office report, it was ordered to be checked and registered. Notice of the suit as well as stay application was issued to the defendant for 02.01.2017. On the next date itself, the defendant/petitioner was proceeded against *ex parte*.

[3]. In view of Order 9 Rules 6 and 7 CPC, defendant can appear in the suit on the next date of hearing on showing good cause of his previous non-appearance. On showing such cause, the Court can direct him to appear in the case subject to costs or otherwise. He can be heard to answer the suit. Perusal of Articles 122 and 123 of the Limitation Act would show that the controversy of such nature is not covered under the rigour of those provisions. The case falls under the ambit of Article 137 of the Limitation Act and the limitation for filing such an application would be governed by that provision. It is so recorded on the strength of decision dated 11.07.2018 passed in **CR No.4223 of 2018** titled **M/s Sant Security Servicers (Regd.) through its Manager and another Vs. Gurdev Singh.**

[4]. The application for setting aside the *ex parte* order dated 02.01.2017 was filed after a period of eight months. Since the petitioner was proceeded against *ex parte* only on the first date of appearance and the provision is handmaid of justice therefore, I deem it appropriate to set aside the impugned order as the same is found to be quite harsh and is not in consonance with Order 9 Rule 7 CPC for which defendant/petitioner can be burdened with adequate costs. This revision petition is accordingly allowed, however subject to payment of costs of Rs.10,000/- to be paid to the plaintiff. Payment of costs shall be

the condition precedent for granting indulgence in the aforesaid context.

05.02.2019

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No