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

**CR No.7392 of 2018
Date of Decision: 31.01.2019**

Chandro

Petitioner

Versus

Sunita and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gunjan Mehta, Advocate
for the petitioner.

Mr. S.S. Verma, Advocate
for respondents No.1 and 2.

AVNEESH JHINGAN, J (Oral):

The present civil revision petition has been filed by the petitioner being aggrieved of the order dated 09.10.2018 passed by the Civil Judge, Junior Division, Meham [hereinafter referred to as 'Civil Court'] dismissing the application for setting aside the *ex-parte* order dated 29.04.2015.

The facts in brief are that respondents No.1 and 2-plaintiffs filed a suit for declaration challenging the sale deeds dated 23.04.2014 and 07.07.2014. Notice was issued. The petitioner (defendant No.4 in the suit) was proceeded against *ex-parte* vide order dated 29.04.2015. An application for setting aside the *ex-*

parte order was filed on 08.10.2018. In the application it was pleaded that the petitioner came to know about the present proceedings on 01.10.2018. The Civil Court dismissed the application stating that on earlier occasion, counsel Sh. P.S. Dhaka filed Memorandum of Appearance on behalf of the petitioner/applicant and that the Summon was duly served upon her husband. Aggrieved of the order, the present petition has been filed.

Learned counsel for the petitioner states that the petitioner had never authorised the counsel Sh. P.S. Dhaka to appear on her behalf. He further states that petitioner is 82 years old and one opportunity may be given to file the written statement. There is no intention to delay the proceedings and she would conclude her evidence in two effective opportunities.

Learned counsel for respondents No.1 and 2 argues that entire endeavour is to delay the proceedings. The petitioner intentionally never put in appearance before the Civil Court.

Considering the fact that counsel Sh. P.S. Dhaka never filed any Power of Attorney or *Vakalatnama*, authorizing him to appear on behalf of the petitioner and considering the facts and her age, it would not be in the interest of justice that she is proceeded against *ex-parte*. The apprehension of learned counsel for respondents No.1 and 2 that entire endeavour is to delay the proceedings can be taken care of by making it time bound for the petitioner to file the written statement and to conclude her evidence.

The fact that she was served through her husband are

not being considered at this stage.

The impugned order is set aside. The petitioner shall file the written statement within three weeks from today. No unjustified adjournment shall be sought by the petitioner and she will conclude her evidence in two effective opportunities provided by the Civil Court.

The impugned order is set aside subject to payment of ₹15,000/- as costs to respondents.

The civil revision petition is allowed.

[AVNEESH JHINGAN]
JUDGE

January 31st, 2019
pankaj baweja

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|-------------------------------|---|---------|
| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |