

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8234 of 2016
Date of Decision: February 01, 2019

Ranjit Singh Dhaliwal

...Petitioner

Versus

Gursewak Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rakesh Bhatia, Advocate,
for the petitioner.

Mr. Alankar Narula, Advocate for
Mr. Prateek Gupta, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The present revision petition is directed against the impugned order 07.11.2016 (Annexure P-4), whereby the application of petitioner-defendant No.1 for setting-aside the ex-parte order dated 21.03.2014, has been dismissed.

Mr. Rakesh Bhatia, learned counsel appearing for the petitioner-defendant No.1 submitted that three suits were filed by the respondent-plaintiff. No doubt, in the first suit, the petitioner had appeared and contested the same by filing written statement. Owing to the non-service, the petitioner was proceeded ex-parte on 28.04.2012, but on application and without objection from the other side, the ex-parte proceedings were set-aside vide order dated 15.02.2013. Respondent-plaintiff submitted an application for amendment of the plaint on

07.12.2013 and again the petitioner was proceeded ex-parte on 21.03.2014 under the impression that two similar suits of such nature were dismissed in default on 14.03.2014 and 18.04.2014. The absence was neither intentional nor willful but under the impression aforementioned. Petitioner wants to join the proceedings, file amended written statement and cross-examine the plaintiff's witnesses. In support of the aforementioned contention, relied upon the judgments rendered by this Court in **Ram Kumar & Ors. Versus Madan Lal Tyagi, 2006(4) Civil Court Cases 512 and Harbans Singh & Ors. Versus Smt.Sowinder Kaur & Ors., 2007(3) Civil Court Cases 321 (P&H).**

Per contra, Mr.Alankar Narula Advocate for Mr.Prateek Gupta, learned counsel for respondent No.1 submitted that petitioner is in the habit of proceeding ex-parte with an intention to delay the proceedings, but did not deny the dismissal of the other suits. The affidavit of the counsel allegedly relied upon by Mr. Bhatia is also without any substance and, thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Bhatia.

The dates noticed above are not in dispute. On 07.12.2013, the Court while receiving the application for amendment of the plaint, had no other option but to send notice to the petitioner-defendant No.1 on account of his absence. The matter was adjourned to 29.01.2014 and 20.02.2014. Finally on 21.03.2014, vide the impugned order, the petitioner was proceeded ex-parte. The dismissal in default of other suits in terms of the order is co-relating the date of ex-parte. In view of the affidavit of the

counsel, claiming impression, as explained, in application cannot be ruled out. The procedure provided is handmade of justice and cannot be strictly followed in preventing the defendant to contest the suit. No doubt, application was filed on 04.01.2016 from the concerned Estate office. The Court should have focused on the adjudication of the trial instead of keeping the application pending resulting into passing of the impugned order dated 07.11.2016 (Annexure P-4).

For the reasons mentioned above, the impugned order is not sustainable as the same suffers from illegality and perversity. The same is hereby set-aside. Liberty is granted to the petitioner to file the amended written statement and also cross-examine the witnesses of the plaintiffs. The amended written statement be filed within 15 days from the receipt of certified copy of this order. The trial Court shall dispose of the case as expeditiously as possible.

Revision petition stands allowed subject to payment of 10,000/- as costs, which shall be a condition precedent.

February 01, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No