

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

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CR No.1421 of 2019**Date of Decision : 28.02.2019****VARINDER SINGH****....PETITIONER****V/S****HARSIMRAN SINGH AND OTHERS****....RESPONDENTS****CORAM : HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. H.S. Randhawa, Advocate for the petitioner.

B.S. WALIA, J. (ORAL)

[1] Learned counsel contends that he does not challenge order dated 15.07.2014 (Annexure P-3) on merits and challenges order dated 12.09.2018 (Annexure P-1) only to the extent that the petitioner cannot be prevented from participating in the proceedings with effect from the date he put in appearance in terms of Order 9 Rule 7 of the CPC.

[2] No doubt, on dismissal of his application under Order 9 Rule 11 CPC, petitioner could not have been relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings. However, he could not be prevented from participating in the proceedings to cross-examine the plaintiff or his witnesses that if necessarily, to lead evidence in rebuttal if the aforementioned stage had not already been crossed. Learned counsel for the petitioner states that in the circumstances, the impugned order is liable to be modified and the petitioner held entitled to participate in the proceedings with effect from the date he has put in appearance. On account of the stand taken, I

delay the conclusion of the trial Court proceedings but would also result in the respondents incurring expenditure. Accordingly, while disposing of the revision petition on merit by holding that the petitioner is not entitled to be relegated to the position would have occupied if he had appeared at the earlier hearing or hearings, it is clarified that in view of the decision of Hon'ble the Supreme Court in '**Om Parkash** versus **Amarjit Singh and another**', 1988 (3) *Judgments Today* 555, the petitioner has the right to participate in the proceedings with effect from the date he has put in appearance. Relevant extract of the decision of '**Om Parkash's** case (*supra*) is reproduced as under:-

*"The appeal to the principle in **Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal Bayai, (1955) 2 SCR 1 : 10 ELR 293** in the circumstances, is not much of assistance to the appellant. It is true that it would not be necessary for a party to get rid of an order placing him ex parte if the party wishes to participate in the proceedings at any particular stage onwards, provided that he does not seek to be relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings and does not seek to set back the hands of the clock. It means that he must accept all that has gone before and be content to proceed from the stage at which he has come in. [See also: **Arjun Singh v. Mohindra Kumar, (1964) 5 SCR 946**]. In the present case, appellant did seek to set the hands of the clock backwards; he wanted the witnesses to be recalled for cross-examination. This, unfortunately, was not permissible having regard to the finality the order of remand had assumed."*

Accordingly, impugned order is modified. Petitioner is held entitled to participate in the proceedings with effect from the date he has put in

appearance before the learned trial court. Revision petition is disposed of in the light of the position noted above.

(B.S. WALIA)
JUDGE

February 28, 2019
‘Rajneesh’

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No