

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

**CR no.2914 of 2019 (O&M)
Date of Decision: 15.05.2019**

Sumanjit Singh

...Petitioner

Vs.

Jasbir Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Mohit Sadana, Advocate, for the petitioner.

Amol Rattan Singh, J (Oral)

On 06.05.2019, the following order was passed:-

“CM no.10008-CII of 2019

The application is allowed. Filing of certified copies of Annexures P-1 to P-5 is exempted.

CR no.2914 of 2019 (O&M)

Learned counsel for the petitioner though has argued that as a matter of fact the refusal on the receipt of the notice issued as has been reflected in the impugned order of the learned trial Court dated 20.3.2014, was not by the petitioner, i.e. defendant no.1 in the suit, but actually by his brother with whom he was having a dispute, that story is not possible to accept for the simple reason that the petitioner for 5 years thereafter, despite admittedly having knowledge of the suit (because it has also been contended that he had asked his mother to engage a particular counsel to defend the suit), thereafter approached the trial only after 5 years later seeking that the order proceeding against him *ex parte* be withdrawn.

Very obviously even if that story were to be accepted at face value, which it cannot be, he having remained completely callous to the litigation for 5 long years, he would naturally have to suffer for such callousness.

However, at this stage, learned counsel submits that the with the evidence for the defendants still being in progress (as submitted to

this Court).

Notice of motion to respondents no.1 and 2 only (who are shown to be the contesting respondents in the petition), returnable on 15.5.2019.

Dasti only, with liberty granted to serve the said respondents through counsel regularly appearing for them in the trial Court with the last three orders of that Court to be annexed along with the report on service, to show that the said counsel is actually appearing for them.

To be shown in the urgent list.”

Pursuant to notice having been issued, Mr. Surjit Singh Swaich, Advocate, appears for respondents no.1 and 2 and has filed a power of attorney executed in his favour, which is taken on record.

The petitioner having challenged the order passed by the learned trial court dated 20.03.2014, proceeding against him *ex parte*, learned counsel appearing for him reiterates what he had submitted on the date when notice of motion was issued in this petition, i.e. on 06.05.2019, that the petitioner would not file a fresh written statement if the impugned order is set aside, but would simply adopt the written statement filed by defendants no.2 and 3, i.e. his brother and mother respectively, with learned counsel further submitting that since the next date of hearing before the trial court is tomorrow, i.e. 16.05.2019, with a last opportunity granted to the defendant to lead his evidence, he may be allowed to step into the witness box tomorrow and testify.

Learned counsel for the petitioner has also stated (upon an objection raised by Mr. Swaich), that the petitioner would not move any application seeking to recall any witness already examined.

He is held bound to the said statement.

That being so, with Mr. Swaich naturally not able to refute the contention that a party to a *lis* has at least a right to appear before the court even after being proceeded against *ex parte*, in my opinion, this petition deserves to be allowed to the extent of the statements made by counsel for the petitioner.

Consequently, the impugned order is set aside, with the petitioner allowed to adopt the written statement filed by his co-defendants i.e. defendants no.2 and 3, and to thereafter step into the witness box to testify before the trial court on the next date of hearing, i.e. tomorrow itself.

Naturally, thereafter he would be subjected to cross-examination if the respondents-plaintiffs so wish, but with no witness to be recalled on any application filed by the petitioner herein.

The petition is allowed in the aforesaid terms.

15.05.2019

vcgarg

(Amol Rattan Singh)

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes