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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7117-2017 (O&M)

Date of decision : 31.01.2019

M/s Singhal Pesticides

... Petitioner

Versus

M/s Rajeev Sales Agency

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Gupta, Advocate
for the petitioner.

Mr. Anurag Jain, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the petitioner-judgment debtor/defendant for setting aside the *ex parte* judgment and decree dated 18.08.2011 passed in a civil suit, awarding the damages to the tune of ₹10 Lacs along with interest, has been dismissed.

Learned counsel appearing on behalf of the petitioner submitted that the petitioner was never served regarding the proceedings of the suit, resulting into, *ex parte* judgment and decree. On receipt of summons in the execution application, an application under Order 9 Rule 13 of the Code of Civil Procedure was submitted on 27.04.2012 and after opposing and framing of issues, the same was dismissed. Even the appeal also met with the same fate.

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It was further contended that in the execution application, a bank guarantee for the satisfaction of the Executing Court has already been tendered. No harm and prejudice would be caused, in case one opportunity is granted to the petitioner to defend the suit, by fixing any time line or subject to any terms and conditions, which this Court may deem fit appropriate.

Learned counsel for the respondents submitted that Registered A.D. Cover sent at the address of the petitioner, did not receive back and therefore, it was deemed service as per the provisions of Section 27 of the General Clauses Act. The address given in the present revision petition is in tandem with the memo of parties of the suit. It is an adoption of delaying tactics and to tire out the plaintiffs, thus, urges this Court for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book.

No doubt, the approach of the petitioner/defendant had been callous and lackadaisical in pursuing the matter, but rejection of the application for setting aside the ex parte judgment and decree, vide impugned order, in my view, has rendered miscarriage of justice, particularly when the petitioner submitted bank guarantee to the satisfaction of the Court below. The Courts below are required to advance justice, instead of passing the orders. In order to render justice and prevent the miscarriage of justice, I deem it appropriate to grant effective opportunity to the petitioner to defend the suit. Accordingly, the impugned orders are hereby set aside, subject to the condition that the petitioner-defendant shall file the written statement within 15 days from the date of appearance before

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the trial Court and within another 15 days, replication on behalf of the plaintiff/respondent be filed. Thereafter, the parties to the *lis* shall lead evidence by affording 3-3 effective opportunity. The trial Court shall endeavour to expedite the trial of the suit as expeditiously as possible preferably within a period of ten months.

Resultantly, the present revision petition stands allowed, subject to the payment of costs of ₹25,000/-, which shall be condition precedent.

31.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**