

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

CR No.7084 of 2019

DATE OF DECISION:07.11.2019

Parkasho Devi

...Petitioner/defendant No.11

Vs.

Diwan Chand and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Present: Mr. Jagram Singh Cooner, Advocate
for the petitioner/defendant No.11.

LALIT BATRA, J. (Oral)

This civil revision has been moved by petitioner/defendant No.11 (Parkasho Devi) impugning the legality of order dated 06.05.2019, rendered by trial Court, in terms of which, petitioner/defendant No.11 was proceeded *ex parte*. Further petitioner/defendant No.11 has also impugned the legality of order dated 09.10.2019 rendered by trial Court, in terms of which, application moved by petitioner/defendant No.11 for setting aside order dated 06.05.2019 whereby she was proceeded *ex parte* and to join her in the proceedings of civil suit, has been dismissed.

2. Learned counsel for the petitioner/defendant No.11 at the very outset has urged that no process for summoning of petitioner/defendant No.11 by way of substituted service i.e. beat of drum (munadi) was ever issued for 06.05.2019, whereas trial Court, vide order dated 06.05.2019, while taking notice of previous process, if any, had wrongly proceeded petitioner/defendant No.11 *ex parte*. He further urged that even otherwise

application was moved at the instance of petitioner/defendant No.11 before the trial Court to set aside impugned order dated 06.05.2019 and to join her in the proceedings of civil suit but that application was dismissed by the trial Court, vide order dated 09.10.2019 and that too without any cogent reasons. He further urged that since no process was issued for 06.05.2019 to seek appearance of petitioner/defendant No.11 in the Court, impugned orders dated 06.05.2019 and 09.10.2019, are liable to be set aside, so that petitioner/defendant No.11 may join the proceedings and defend the civil suit.

3. I have heard learned counsel for the petitioner/defendant No.11 and have carefully gone through the contents of petition, impugned orders as well as record of the case.

4. Under Article 227 of the Constitution of India, the powers can always be exercised to correct an error in the order of the trial Court which causes injustice to a party. In the present case, while proceeding *ex parte* against petitioner/defendant No.11 and further while rejecting her application for setting aside *ex parte* proceedings initiated against her, the trial Court has shut the case of petitioner/defendant No.11 and, thus, she is not in a position to defend her case.

5. A bare perusal of copy of miscellaneous order dated 26.02.2019 rendered by trial Court reveals that on that day process of substituted service i.e. by way of beat of drum (munadi) issued against defendants No.13 to 16 was received back with the report of refusal and

since no one had appeared in Court on behalf of defendants No.13 to 16 and as such those defendants were proceeded *ex parte*. It was specifically ordered on 26.02.2019 by the trial Court that fresh process i.e. by way of beat of drum (munadi) be issued in respect of defendant No.11 (petitioner herein) for 06.05.2019 and that too on deposit of munadi fee etc. Further a bare perusal of impugned order dated 06.05.2019 clearly reveals that the trial Court while observing that process of munadi in respect of petitioner/defendant No.11 had already been received back effected on 26.02.2019 and since said defendant did not appear before the Court on that day and as such petitioner/defendant No.11 was proceeded *ex parte*. Though application was moved by petitioner/defendant No.11 for setting aside impugned order dated 06.05.2019, in terms of which, she was proceeded *ex parte* but the trial Court while reiterating its previous stand dated 06.05.2019, did not concur with her cause and ultimately rejected her above said application, vide order dated 09.10.2019.

6. In view of above, it is quite apparent on the record that process of munadi, if any, issued for 26.02.2019 in respect of petitioner/defendant No.11, was never acted upon on 26.02.2019. In fact, vide order dated 26.02.2019, trial Court specifically ordered that process of munadi be issued against petitioner/defendant No.11 for 06.05.2019. It is apparent on the record that no process of munadi was issued for 06.05.2019 seeking appearance of petitioner/defendant No.11 in the Court. However, on 06.05.2019, trial Court while acting upon process of munadi already

issued for 26.02.2019 in respect of petitioner/defendant No.11, thus, on account of non-appearance of defendant No.11 in the Court on 06.05.2019 went on to proceed her *ex parte*. Admittedly, no process of munadi was issued for 06.05.2019 seeking appearance of petitioner/defendant No.11 in the Court, on which date, said defendant was proceeded *ex parte*. In view of basic principle of legal jurisprudence that nobody should be condemned unheard, thus, in view of orders dated 06.05.2019 and 09.10.2019, petitioner/defendant No.11, who has been deprived of her legal right to defend her case, those orders passed in violation of above said principle, cannot be sustained in the eyes of law.

7. As a sequel to above discussion, impugned orders dated 06.05.2019 and 09.10.2019 rendered by trial Court are set aside. Instant civil revision is allowed and resultantly *ex parte* proceedings initiated against petitioner/defendant No.11 (Parkasho Devi) are set aside and she is permitted to join proceedings of Civil Suit No.34 of 2016 titled "Diwan Chand and others Vs. Gian Chand and others" to defend her cause in accordance with law.

8. Disposed of accordingly.

(LALIT BATRA)
JUDGE

07.11.2019

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No