

In the High Court of Punjab and Haryana at Chandigarh

118

CR-45-2020 (O & M)

Date of Decision: January 08, 2020

RAJESH KUMAR

.....PETITIONER

VERSUS

VANDANA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Petitioner in person.

ANUPINDER SINGH GREWAL, J (ORAL)

The petitioner has challenged the order passed by the trial Court on 07.11.2019 whereby the application preferred by the respondent/defendant under Order 9 Rule 7 CPC has been allowed while the application preferred by the petitioner/plaintiff under Order 8 Rule 10 CPC has been dismissed.

The petitioner, who is appearing in person, contends that the respondent was intentionally not putting in appearance before the trial Court and was trying to delay the proceedings. She had also not filed the written statement within the stipulated period of 120 days and, therefore, the impugned order deserves to be set aside. He also contends that the ex parte evidence had also been tendered by him and, therefore, the matter was at the stage of arguments and hence at that stage, the application of the respondent for setting aside the ex parte order should not have been allowed. He has also relied upon the judgment of the Supreme Court in the case of **M/s SCG Contracts India Pvt.Ltd. versus K.S.Chamankar Infrastructure Pvt. Ltd. and others,** (2019) 2 RCR (Civil) 249.

Heard.

The petitioner had filed a civil suit seeking permanent injunction and declaration for restraining the defendant, who is his wife, to enter in his residential house. The respondent/defendant had been proceeded ex parte. She had preferred an application for setting aside the ex parte order and for joining proceedings. The same has been allowed by the trial Court by the impugned order. The petitioner had also preferred an application for dismissal of the suit in terms of Order 8 Rule 10 CPC as the respondent/defendant had not filed the written statement within the period stipulated therein. It was stated by the defendant/respondent in the application for setting aside the ex parte order that she was working as a Sub Inspector in the Border Security Force and posted at Ferozepur which is close to the Indo-Pak border and, therefore, she could not appear before the Court which resulted in passing of the ex parte order.

I am of the considered view that the impugned order allowing the defendant/respondent to participate in the proceedings and setting aside the ex parte order under the facts and circumstance is justified. The defendant had been permitted to join the proceedings and, therefore, it was imperative to grant her an opportunity to file written statement. The judgment of the Supreme Court in the case **M/s SCG Contracts India Pvt.Ltd. versus K.S.Chamankar Infrastructure Pvt. Ltd. and others** (supra) which has been relied upon by the petitioner, is distinguishable on facts from the instant case. In that case, the defendant had been served and had participated in the proceedings. He had not filed the written statement within the period of 120 days after having participated in the proceedings and in such circumstances, it was held by the Supreme Court that the Court cannot extend the statutory period of 120 days. In the case at hand, defendant/respondent had been proceeded ex parte and the

order proceeding against her has been set aside by the impugned order and, therefore, dismissal of the application of the petitioner under Order 8 Rule 10 CPC does not suffer from any infirmity. The defendant/respondent has been permitted to join the proceedings and, therefore, it is necessary for her to file the written statement so as to effectively defend the proceedings.

Consequently, I do not find any merit in the instant case which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

January 08, 2020
A.Kaundal

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No