

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

**Civil Revision No.1224 of 2021 (O&M)
Date of Decision: July 22, 2021**

Smt. Madhu Goel

.....Petitioner.

VERSUS

Pankaj Mittal and others

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE G. S. SANDHAWALIA

Present: Mr. Gaurav Singla, Advocate
for the petitioner.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S. SANDHAWALIA, J.(Oral)

In the present civil revision filed under Article 227 of the Constitution of India, challenge is raised to the impugned order dated 24.12.2020 (Annexure P-5) passed by the Court of Additional Civil Judge (Senior Division), Faridabad. Vide the said order, the application for setting aside the ex parte order dated 16.08.2018 has been dismissed. However, the petitioner-defendant No.1 has been allowed to join the proceedings of the case from the stage she appeared for the first time before the trial Court.

Counsel for the petitioner has vehemently argued from the zimni orders that initially a report had been received that the petitioner had left the house and settled elsewhere and thus, fresh notice was issued on 27.07.2018 to her for 16.08.2018. On that date, the trial Court had noticed that the report was of incorrect address. However, notice sent through the

registered post has been received back with the report delivered on 23.07.2018. Counsel for the plaintiff had also placed on record track/consignment/postal receipt, therefore, on this report, petitioner had been proceeded ex parte. Counsel has further submitted that once the address was incorrect, the delivery of summons by way of registered post, was wrongly accepted by the trial Court.

The trial Court while dismissing the application, noted that the application which had been filed for setting aside the ex parte order, was supported by affidavit of petitioner, showing the same address namely house No.35-36, Sector-9, Faridabad and therefore, the contention that they had shifted, was not accepted. Rather, it was held that it is proved that she had received summons on the address given and thus, no ground was made out to set aside the ex parte proceedings.

It is to be noticed that the suit for specific performance of the agreement to sell dated 19.09.2016 with consequential relief of permanent injunction regarding plot No.158, Block-J, Sector 10, DLF Faridabad and alternate decree for recovery of Rs.1,65,00,000/- with interest was filed on 09.07.2018. Perusal of the suit would go on to show that a sum of Rs.85,00,000/- had been transferred in the bank account of the defendant-petitioner. In the application for setting aside ex parte order dated 16.08.2018, the knowledge is subscribed that some employee of the defendant No.1/petitioner had appeared in some other case and then the petitioner came to know about the pendency of the present case against her. It was specifically averred that on account of the summons having been delivered on 23.07.2018, ex parte order had been passed but the defendant

was not residing at the given address as given by the plaintiff. Nowhere in the application, it has been averred that the defendant had shifted to which place. As noticed above, the affidavit itself in support of the application has given the same address. The intention of the defendant No.1-petitioner, as such, is apparently clear that she wanted to delay the proceedings and to avoid the liability to pay the huge amount received in view of the agreement. It is also noticed that issues were framed on 30.10.2018 and five witnesses have already been examined. Petitioner-defendant No.1 had, thus, waited for considerable time before filing the application on 17.01.2020 and her conduct, as such, cannot be said to be bona fide. The application itself is not explicit regarding the new address where she has, as such, been residing on account of the alleged shifting.

When summons have been duly served, the Court had jurisdiction to pass an order that the suit shall be heard ex parte and the defendant has to assign good cause for his previous non-appearance for getting the said order set aside. Sufficient cause, thus, has to be shown that what prevented the defendant from appearing to the hearing on the date fixed, which the defendant No.1-petitioner has not been able to explain in the facts and circumstances, which have been discussed above.

It is a matter of record that petitioner is wife of Amit Goel, Director, Piyush Buildwell India Limited, who is in judicial custody on account of large number of cases pending against him under Section 138 of Negotiable Instruments Act and is one of the major defaulters and a prominent Builder of the area. The property, which is subject matter of the suit had been mortgaged to Oriental Bank of Commerce and in turn to

DHBVNL of Circle-V, Sector-23, Faridabad on account of electricity loan of Piyush Buildwell India Limited for Rs.80,00,000/- and Rs.1,18,00,000/-, which finds mention in the civil suit also. It is thus apparent that the petitioner is not an ordinary litigant and it could not be assumed that she was not aware of the fact that a suit for specific performance had been filed against her. In such circumstances, no exception can be taken against the order passed by the trial Court, denying the petitioner to set aside the ex parte order, whereby she had been proceeded ex parte.

With the above observations, the present petition is dismissed.

July 22, 2021

Sachin M.

(G. S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*