

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 2306 of 2021 (O&M)
Date of Decision:12.10.2021

Balwinder Singh

.....Petitioner

Versus

Sandeep Mittal and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Mandeep Kumar Dhot, Advocate,
for the petitioner.

LISA GILL, J(Oral).

Petitioner, who is arrayed as defendant no.2 in the civil suit filed by plaintiff-respondent no.1, has filed this revision petition for setting aside order dated 28.01.2019, Annexure P-3, whereby his defence has been struck off and he was proceeded *ex parte*.

It is mentioned in the impugned order dated 28.01.2019, that despite sufficient opportunities, written statement has not been filed and despite the matter being called several times, none had appeared on behalf of the said defendant. Accordingly, petitioner-defendant no.2 was ordered to be proceeded ex-parte.

Learned counsel for the petitioner vehemently argues that it is merely due to an incorrect noting of the date of hearing, by the petitioner's counsel that petitioner/his counsel was not present with the written statement on 28.01.2019. Petitioner's counsel, it is asserted noted the date of hearing as 29.01.2019 instead of 28.01.2019, which was the date on which the matter was actually listed. Written statement on behalf of the petitioner, it is contended was ready on 29.01.2019 and when the petitioner came to know

of passing of order dated 28.01.2019, an application for recall of order dated 28.01.2019 was immediately moved on the same date. The said application was however dismissed by the learned trial Court on 12.02.2020, while observing that the said Court has no power to recall order dated 28.01.2019 and the application was not maintainable. Thereafter, due to outbreak of the Pandemic COVID-19, petitioner could not approach this Court for redressal of his grievance. It is further submitted that there has not been much progress in the suit before the learned trial Court due to the outbreak of Pandemic COVID-19. Issues have not yet been framed and the matter is listed for consideration of the application under Order 39 Rule 1 and 2 CPC, filed by the plaintiffs. The matter is listed before the learned trial Court on 13.10.2021 and in case, an opportunity is afforded to the petitioner, he undertakes to file the written statement on 13.10.2021 itself. Petitioner further undertakes not to cause any kind of delay in the proceedings before the learned trial Court. It is submitted that in case impugned order is not set aside manifest injustice shall be caused to the petitioner. It is thus prayed that this revision petition be allowed.

I have heard learned counsel for the petitioner and have gone through the file with his assistance.

This order is being passed without issuance of notice to the respondents in order to obviate any further delay and unnecessary expenditure to the respondents.

Perusal of file reveals that an application for recall of order dated 28.01.2019, was indeed moved immediately on 29.01.2019. The said application was dismissed on 12.02.2020 and it cannot be disputed that due to outbreak of the pandemic COVID-19, delay has been caused in the proceedings thereafter.

Learned counsel for the petitioner has categorically stated that issues in the matter have not yet been framed and proceedings before the learned trial Court are still at the initial stage. Suit for possession by way of specific performance of agreement to sell dated 08.09.2016, was filed by respondent no.1. Present petitioner arrayed as defendant no.2, is alleged to have purchased the suit property by way of a registered sale deed dated 24.01.2017 from defendant no.1. Doubtlessly, irreparable loss and grave prejudice shall be caused to the petitioner, in case his defence is struck off and he is proceeded *ex parte*.

Keeping in view the facts and circumstances of the case, as well as the stage of the trial, impugned order dated 28.01.2019, is set aside. In case, petitioner presents his written statement before the learned trial Court on 13.10.2021 along with cost of Rs. 25,000/- to be paid to the plaintiff-respondent no.1, the same be accepted and the petitioner be permitted to join proceedings. It is made clear that no further opportunity in this regard shall be afforded to the petitioner. Needless to say, liberty is afforded to the respondents to move an appropriate application, in case of any incorrect narration of facts before this Court.

Revision petition is accordingly disposed of.

Copy of this order be supplied to learned counsel for the petitioner under signatures of the Bench Secretary of this Court.

12.10.2021
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.