

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

CR-2436-2018
Decided on : 26.04.2022

Malkiat Singh

..... Petitioner

Versus

Paramjit Kaur and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harminder Singh, Advocate
 for the petitioner.

 Mr. G.S.Sirphiki, Advocate
 for respondents No.1 and 2.

Manjari Nehru Kaul, J.(Oral)

Petitioner herein is defendant No.2 before the Court of Addl. Civil Judge (Sr. Div.) Batala in a suit for declaration and in the alternative suit for possession filed by the respondents herein.

The petitioner is aggrieved by the order dated 08.01.2018 (Annexure P-3) passed by the trial Court, Batala whereby an application for setting aside the ex parte proceedings filed by him was decided and the petitioner was granted liberty to participate in the proceedings at the stage at which he put in appearance. Hence, the instant petition has been filed under Article 227 of the Constitution of India.

Learned counsel for the petitioner *inter alia* contends that the petitioner is a permanent resident of UAE where he is working as a construction carpenter for the last many years and hence he rarely visits India. It has also been submitted that the petitioner does not have cordial

relations with his brothers, who are defendants in the civil suit, which is pending adjudication before the Civil Court, Batala. Hence, he was not aware about the pendency of the aforesaid litigation. Learned counsel submits that he learnt about the pendency of the case only on 13.10.2017 when he made inquiries through his counsel and soon thereafter he filed an application for setting aside the impugned order, vide which he had been proceeded against ex parte. Learned counsel still further submits that the proper procedure to effect service on him was not followed as per the provisions of law. Therefore, his absence was unintentional and bonafide.

On being put to notice, learned counsel has entered appearance on behalf of respondents-plaintiffs and vehemently disputed and controverted the submissions made by the counsel opposite. Learned counsel submits that it was a matter of record that the petitioner was duly served on 25.04.2013 when admittedly he was in India. However, he refused to accept the summons, which fact stands duly reflected in the report of the process server as well. He further submits that on 25.04.2013 one of his brothers i.e. defendant No.1 -Kulbir Singh was served. Learned counsel submits that it cannot be believed that in the aforesaid circumstances that the petitioner would not have been aware about the institution of the civil suit before the Court below, more so, when defendant No.1 was not only his own brother but it was also a matter of record that they were residing together in the same house as the summons had been served at the same address. Still further, the factum of the petitioner being present in India stands established from the entries in his passport wherein it clearly stands reflected that the petitioner left UAE for India on 26.02.2013

and arrived back from India to UAE on 09.07.2013.

Heard learned counsel and perused the relevant material on record.

A perusal of the entries in the passport reveals that the petitioner was in India between 27.02.2013 to 08.07.2013. Thus, it is abundantly clear that on the date when he refused to accept summons i.e. 25.04.2013, the petitioner being in India was well aware about the institution of the civil suit in question. Moreover, a perusal of the memo of parties filed before the Civil Court reveals that defendants No.1 and 3 are real brothers of the petitioner and their residential address given is also the same. Hence, it cannot be digested that the petitioner would not have had the knowledge about the pendency of the suit in question. The Court below has already granted liberty to the petitioner to participate in the proceedings from the stage at which he would put in an appearance. Hence, this Court does not find any cogent or convincing reason to set aside the order passed by the Court below, which comes across as a well reasoned one.

Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

26.04.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No