

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8247 of 2016 (O&M)
Date of decision: 29.09.2022

Mohinder Kaur

..Petitioner

Versus

Tarlochan Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parvez Chugh, Advocate, for the petitioner.

Mr. Sanjiv Kumar Aggarwal, Advocate,
Mr. Ojas Bansal, Advocate and Mr. Tejas Bansal, Advocate,
for respondent no.1

ANIL KSHETARPAL, J(Oral)

In a suit for possession by way of specific performance of the agreement to sell, the petitioner herein is defendant no.2. She is the owner of the suit property. It is alleged by the plaintiff that she entered into the agreement to sell with the plaintiff through her attorney. Hence, she is the contesting defendant. She was proceeded against ex-parte as she did not appear in the court despite the service of notice. On 24.09.2014, an application for setting aside the ex-parte proceedings was filed on her behalf which was again dismissed in default on 02.12.2015. Thereafter, the petitioner filed an application for setting aside the ex-parte proceedings which has been dismissed as not maintainable, as she did not pray for setting aside the ex- parte proceedings.

This revision petition has been filed challenging the correctness of the order passed by the trial court dismissing an application for setting aside the ex-parte proceedings.

This Bench has heard the learned counsels representing the

parties at length and with their able assistance perused the paper book.

Undoubtedly, the petitioner was required to file an application for restoration of application for setting aside the ex-parte proceedings, however, unfortunately her counsel filed an incorrect application.

This Court is of the opinion that the view taken by the trial Court is hyper-technical. No doubt, the proper application was not filed, however, the court should have seen the substance of the application rather than taking a myopic/narrow view of the matter. It is not in dispute that the petitioner is the contesting defendant in a suit for possession by way of specific performance/ Hence, she should be given an opportunity to contest the suit.

Keeping in view the aforesaid facts, this court in exercise of its powers under Article 227 of the Constitution of India proceeds to substantially decide the revision . The ex-parte proceedings ordered on 20.08.2014 are set aside. The trial Court is requested to grant an opportunity to the petitioner to file her written statement in the said case.

This order has been passed in order to avoid the unnecessary delay which has resulted in the pendency of the litigation for all these years. The trial Court is requested to expeditiously decide the suit.

Disposed of accordingly.

All the pending miscellaneous applications, if any, are also disposed of.

September 29, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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