

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

Sr. No.109

**CR-1757-2021 (O&M)
Date of Decision: 23.08.2022**

DES RAJ

...Petitioner

VERSUS

DALBIR CHAND

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Rajat Malhotra, Advocate
for the petitioner.

Mr. Ankit Joshi, Advocate
for the respondent.

ARCHANA PURI, J.

CM No. 10237-CII-2022

Keeping in view the averments made in the application, same is allowed.

CM No.10238-CII-2022

The present application has been filed for placing on record various zimni orders Ex.P4 to P9.

In view of the averments made in the application, same is allowed and Annexures P4 to P9 are taken on record.

Main Case

Challenge in the present revision petition is to the orders dated 13.02.2020 (Annexure P-2) and 20.02.2020 (Annexure P-3), whereby the trial Court had closed the opportunity for filing reply to the application under Order 7 Rule 11 (b)(d) CPC and also the application filed by the petitioner for re-calling the order dated 13.02.2020, had been dismissed.

It is submitted by learned counsel for the petitioner that during the pendency of the suit for declaration filed by the petitioner, the defendant had made appearance and filed an application under Order 7 Rule 11 (b)(d) CPC. However, opportunity of filing reply was given to the petitioner for the first time on 16.01.2020 and thereafter, the case was adjourned to 06.02.2020 for the said purpose. On 06.02.2020, the petitioner could not file reply and the case was adjourned to 13.02.2020 for filing of reply to the application under Order 7 Rule 11 (b)(d) CPC. However, on 13.02.2020 even though, reply was ready but inadvertently, it was not filed at the time when the case was called for the first time and the impugned order was passed, thereby treating the opportunity for filing reply to the above said application, as NIL.

However, it is now submitted by learned counsel for the petitioner that the application for re-calling of the order was filed on that very day and the said application was adjourned to be taken up on 20.02.2020 i.e., the date already fixed in the case. On 20.02.2020, the application for re-calling of the order dated 13.02.2020, was dismissed.

It is pertinent to mention that in the impugned order dated 20.02.2020, it has been observed by the Presiding Officer that the Court had already passed the order to treat the opportunity to file reply as NIL, therefore, the Court cannot recall its own order and the petitioner can avail appropriate remedy before Appellate or Revisional Court.

Keeping in view the manner of passing of the impugned order and also considering the very fact that the application for re-calling of the order so passed on that very day i.e. 13.02.2020, when the opportunity for filing reply was treated as NIL, it cannot be concluded that there was any malafide intention, on the part of the petitioner in not filing the reply.

Now, learned counsel for the petitioner assures that the petitioner shall file reply, if one opportunity is given to do so. He also submits that the case is now fixed for consideration on an application under Order 7 Rule 11 (b)(d) CPC, before learned trial Court.

Considering the aforesaid fact situation, the present revision petition is hereby accepted and the petitioner is granted one opportunity to file reply to the application under Order 7 Rule 11 (b)(d) CPC, on the next date fixed before the lower Court.

23.08.2022*sonu***(ARCHANA PURI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes/No