

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

**CR-4236-2019 (O&M)
Date of decision : 07.04.2022**

Krishan

... Petitioner(s)

Versus

Santraj and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vishwajeet, Advocate for the petitioner.

Mr. Manoj Kaushik, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J. (ORAL)

The present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 23.05.2019 (Annexure P-8) and order dated 16.01.2019 (Annexure P-7), whereby the application (Annexure P-6) for restoration of the application for setting aside the *ex parte* order dated 12.02.2014 as well as *ex parte* judgment and decree dated 25.03.2014 has been dismissed.

Learned counsel for the defendant-petitioner would contend that the defendant-petitioner and proforma respondent No.3 herein, were proceeded against *ex parte* and *ex parte* judgment and decree in a suit for specific performance came to be passed against them on 25.03.2014 (Annexure P-3). Thereafter, on 24.05.2014 an application (Annexure P-4) was filed by the defendant-petitioner for setting aside the *ex parte* order

dated 12.02.2014 as well as judgment and decree dated 25.03.2014 on the ground that the defendants had earlier engaged a counsel who had appeared and filed the written statement, but had thereafter not appeared in the case and that great prejudice had been caused to their rights. The said application was also dismissed in default due to non-appearance of the defendant-petitioner vide order dated 14.10.2016 (Annexure P-5). An application (Annexure P-6) was thereafter filed for restoration of the application for setting aside the *ex parte* order dated 12.02.2014 as well as judgment and decree dated 25.03.2014. This application (Annexure P-6) was dismissed by the Trial Court vide impugned order dated 16.01.2019. The appeal by the defendant-petitioner against the said order dated 16.01.2019 was dismissed by the Appellate Court vide impugned order dated 23.05.2019. Hence, the present civil revision petition.

Learned counsel for defendant-petitioner would contend that the defendant-petitioner had, on both occasions, engaged a counsel to appear in the matter. However, the counsel could not appear on 14.10.2016 and his application (Annexure P-4) filed for setting aside the *ex parte* order dated 12.02.2014 as well as judgment and decree dated 25.03.2014 was dismissed in default by the Trial Court for no fault of the defendant-petitioner. Thereafter, the application (Annexure P-6) filed by the defendant-petitioner for restoration of the application for setting aside the *ex parte* order dated 12.02.2014 as well as judgment and decree dated 25.03.2014 has been dismissed by both the Courts below on illegal and erroneous grounds. He would further contend that there was no willful default on the part of the defendant-petitioner and, hence, an opportunity be granted to him to argue

on his application (Annexure P-4) for setting aside the *ex parte* order dated 12.02.2014 as well as judgment and decree dated 25.03.2014. Learned counsel placed reliance upon the decisions in **Tahil Ram Issardas Sadarangani vs. Ramchand Issardas Sadarangani [1993 Supp (3) SCC 256]** and **Harjinder Singh vs. Kirpal Singh [2000(2) RCR (Civil) 245]** to contend that a party should not be made to suffer for lapse of his counsel.

Per contra, learned counsel for respondent Nos.1 and 2 has contended that sufficient opportunities were granted and the petitioner is intentionally not appearing in order to delay the proceedings. Learned counsel also argued that the defendant-petitioner had filed another application under Order 9 Rule 13 CPC which was later withdrawn by him which showed that the sole aim was to delay the proceedings.

I have heard learned counsel for the parties and perused the paper book.

In the present case, on perusal of the record, it appears that though a counsel had been engaged by the defendant-petitioner in the matter, however, the counsel did not appear in the Trial Court on 14.10.2016 and the application (Annexure P-4) for setting aside the *ex parte* order dated 12.02.2014 as well as judgment and decree dated 25.03.2014 was accordingly dismissed in default. The defendant-petitioner cannot be made to suffer for the fault of the counsel. Neither any *malafide* nor any negligence can be imputed to the defendant-petitioner when his counsel did not appear before the Trial Court on 14.10.2016. Procedure is meant for advancement of justice and not to scuttle justice. If a litigant in his right earnest had engaged a counsel, his expectation always would be that his

lawyer would give the best and would represent him on each and every date of hearing. If the lawyer of the defendant-petitioner was not present on 14.10.2016 and an adverse order has been passed then the defendant-petitioner should not suffer.

In view of the above, I deem it appropriate to allow the present revision petition. The impugned orders dated 23.05.2019 (Annexure P-8), 16.01.2019 (Annexure P-7) are set aside. As a corollary, the order dated 14.10.2016 (Annexure P-5) passed by the Trial Court dismissing in default the application (Annexure P-4) for setting aside the *ex parte* order dated 12.02.2014 as well as judgment and decree dated 25.03.2014 is also set aside. The application filed by petitioner (Annexure P-4 = Application No.12/27.05.2014) is restored and the same shall now be heard and decided by the Trial Court on merits.

Since the matter is pending since 2011, the Trial Court is requested to expedite the hearing of the application (Annexure P-4) for setting aside the *ex parte* order dated 12.02.2014 as well as judgment and decree dated 25.03.2014. Parties to appear before the Trial Court on 28.04.2022. Pending applications, if any, also stand disposed off.

Disposed off.

07.04.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO