

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

CR No.3366 of 2022 (O&M)

Date of decision: 24.08.2022

Kiran Bala

....Petitioner

Versus

Sukhchain Sharma @ Sunny

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Virinder Kumar Shukla, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the order dated 26.07.2022 passed by the trial Court vide which the application for setting-aside the *ex parte* order dated 31.05.2022 (inadvertently mentioned as the order dated 28.04.2022) as well as the order dated 31.05.2022, vide which the petitioner was proceeded *ex parte*.

Brief facts of the case are that the respondent/plaintiff has filed a suit for possession by way of a specific performance of an agreement to sell dated 04.03.2021 regarding the share of land as described in the plaint.

The suit was instituted on 03.03.2022 and notice was issued for 31.05.2022. The petitioner though, was served but on account of her illness, could not appear before the trial Court and therefore, the trial Court vide impugned order dated 31.05.2022, directed that the petitioner/defendant be proceeded *ex parte*.

The petitioner on coming to know about the said order, immediately filed an application for setting-aside the order dated

31.05.2022, by engaging a counsel on 26.07.2022 and on the same day, the application was filed. The trial Court without even issuing notice to the respondent/plaintiff in the said application has summarily dismissed the application for setting-aside the *ex parte* order dated 31.05.2022 (wrongly mentioned as 28.04.2022).

Counsel for the petitioner has argued that the order has been passed by the trial Court in a haste on the same day when the application was filed and without verifying the facts contained in the application seeking setting-aside of the *ex parte* order dated 31.05.2022 and therefore, the impugned orders are liable to be set-aside.

Counsel for the petitioner has relied upon the judgment ***“G.P. Srivastava vs R.K. Raizada and others”*, 2000(2) RCR (Civil) 161**, wherein the Hon’ble Supreme Court has held that while deciding the application under Order 9 Rule 13 CPC, the Court is not to adopt hyper-technical approach and where a party approaches the Court immediately after the *ex parte* order is passed, the same should be allowed. Even otherwise, if the *ex parte* proceedings are not set-aside in the instant case, the petitioner/defendant will not be able to defend the suit for possession by way of a specific performance as prayed for by the plaintiff and will loose her property in *ex parte* proceedings. Though, she has right to defend by way of filing a written statement and contest the same on various grounds as available under Section 20 of the Specific Relief Act.

Since the case is at the initial stage, the issuance of notice to the respondent is dispensed with.

Accordingly, the present petition is allowed and the order

dated 31.05.2022, vide which the petitioner/defendant was proceeded against *ex parte* and the order dated 26.07.2022, passed by the trial Court vide which the application filed by the petitioner/defendant against the order dated 31.05.2022, are set-aside and the petitioner/defendant is permitted to appear and contest the suit by way of filing a written statement and cross-examine the plaintiff's witness, if so examined.

This will, however, be subject to payment of costs of Rs.5,000/- to be paid by the petitioner/defendant to the respondent/plaintiff before the trial Court.

Liberty is also granted to the respondent/plaintiff to revive this petition, if so advised.

(ARVIND SINGH SANGWAN)
JUDGE

24.08.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No