

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5325-2019 (O&M)
Date of decision: 29.10.2022

Kanwaljit Singh

....Petitioner

Vs.

Dalbir Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Hardik Ahluwalia, Advocate for
Mr. T.V.S. Lehal, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 03.01.2018, vide which suit filed by the plaintiff-petitioner praying for a decree of possession by way of specific performance of agreement to sell was dismissed for non-prosecution as well as the order dated 30.05.2019, vide which application filed by the petitioner-plaintiff for restoration of the suit was also dismissed.

Brief facts of the case are that the petitioner filed a suit praying for a decree of possession by way of specific performance of agreement to

sell dated 12.07.2011, in which the respondents-defendants were proceeded against ex-parte.

Learned counsel for the petitioner submits that when the case was fixed for evidence of the plaintiff, inadvertently, his counsel noted the date as 25.01.2018, whereas in fact, the case was adjourned for 03.01.2018. It is further submitted that on 03.01.2018, noticing the fact that no one has appeared on behalf of the plaintiff-petitioner and the respondents-defendants have already been proceeded against ex-parte, the suit was dismissed in default under Order IX Rule 8 CPC. It is also submitted that immediately thereafter, an application was filed for restoration of the suit and vide impugned order dated 30.05.2019, same was dismissed only on the ground that the application has not been filed within the limitation from the date of knowledge i.e. 25.01.2018.

Learned counsel for the respondents has submitted that even at the stage, when the case was fixed for issuance of notice and service of the defendants before the trial Court, no proper service was effected and the defendants were not aware of the ex-parte proceedings against them.

After hearing learned counsel for the parties, this Court is of the considered opinion that it will be in the interest of justice to set aside both the impugned orders, as it is well settled principle of law that no one should be condemned unheard and the suit should be decided on merits.

Learned counsel for the petitioner-plaintiff has stated at Bar that he has no objection, if the ex-parte proceedings initiated against the

respondents-defendants be also set aside and they are permitted to join the proceedings by filing the written statement.

In view of the above, this petition is allowed and the impugned orders dated 03.01.2018 and 30.05.2019 are set aside. The suit is restored to its original number.

The trial Court is directed to allow the respondents-defendants to join the proceedings and file the written statement and proceed further, in accordance with law.

[ARVIND SINGH SANGWAN]
JUDGE

29.10.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No