

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

**CR-8219-2017 (O&M)
Date of decision : 08.07.2022**

Darshna Devi

... Petitioner(s)

Versus

Sheela Devi & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.S. Dalal, Advocate for the petitioner.

Mr. Mantaran Singh Ghumman, Advocate
for the respondents.

ALKA SARIN, J. (ORAL)

This is a revision petition under Article 227 of the Constitution of India challenging the order dated 04.02.2016 (Annexure P-2) whereby the defendant-petitioner was proceeded against *ex parte* and order dated 01.11.2017 dismissing the application filed by the defendant-petitioner for setting aside the *ex parte* order.

Learned counsel for the defendant-petitioner would contend that earlier the counsel had put in appearance on behalf of the defendant-petitioner, however, on 04.02.2016 neither the counsel informed the defendant-petitioner that she was to appear in the matter nor he appeared himself and the defendant-petitioner was proceeded against *ex parte*. Learned counsel for the defendant-petitioner would further contend that the defendant-petitioner has since changed her counsel and that she would be suffering for no fault of hers. It is further the contention of learned counsel

for the defendant-petitioner that irreparable loss and injury would be caused in case the impugned order is not set aside.

Per contra, learned counsel for the plaintiff-respondents has supported the order passed by the Trial Court. It is further the contention of learned counsel for the plaintiff-respondent that the application for setting aside the *ex parte* order was filed after more than a year when substantial evidence had been led by the plaintiff-respondents. It is further the contention of learned counsel for the plaintiff-respondents that the defendant-petitioner had intentionally remained absent from the proceedings and as such she was not entitled to get the *ex parte* order dated 04.02.2016 set aside. Learned counsel for the plaintiff-respondents has relied upon the judgment of Hon'ble Supreme Court in the case of **Vishwabandhu Vs. Sri Krishna and Anr.** [SLP (Civil) D No.1855 of 2020 decided on 29.09.2021] and a judgment of the Delhi High Court in the case of **M/s Hira Sweets & Confectionary Pvt. Ltd. and Others Vs. Hira Confectioners** [(CS (COMM) 17/2018 decided on 27.04.2021)].

Heard.

In the present case, when the case was at the initial stage the defendant-petitioner was proceeded against *ex parte* on 04.02.2016. As per the averments made in the petition, on the earlier three dates counsel had appeared on behalf of the defendant-petitioner and it was only on 04.02.2016 that counsel failed to appear and the defendant-petitioner was proceeded against *ex parte*. It has further been stated that the defendant-petitioner was neither informed about the hearing on 04.02.2016 nor the Advocate appeared

on her behalf on the said date. The defendant-petitioner cannot be made to suffer for the fault of lawyer.

It has been laid down by the Hon'ble Supreme Court in the case of **G.P. Srivastava vs R.K. Raizada & Ors. [2000(3) SCC 54]** as under :

“7. Under Order 9 Rule 13 C.P.C. an ex-parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an ex-parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the Court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as elastic expression for which no hard and fast guidelines can be prescribed. The Courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' from non-appearance refers to the date on which the absence was made a ground for

proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If 'sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when ex-parte proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

In the present case the defendant-petitioner was vigilant and had also engaged a counsel who appeared on three dates but, however, failed to put in appearance on 04.02.2016. The Courts cannot take a narrow and hyper-technical approach when the absence is not intentional and with a malafide intention. Procedure, a hand-maiden to justice, should never be made a tool to deny justice.

The judgment relied upon by learned counsel for the plaintiff-respondents in the case of **M/s Hira Sweets** (*supra*) would not be applicable to the facts of the present case as in the said case prayer was for setting aside the *ex parte* judgment and decree while in the present case the suit is still at the stage of evidence. The other judgment in the case of **Vishwabandhu**

(*supra*) pertains to execution proceedings and is not applicable to the facts of the present case.

In view of the above and keeping in view the fact that the trial is still at the stage of evidence of the plaintiff-respondents and also the fact that the plaintiff-respondents can be compensated with costs, I deem it appropriate to set aside the impugned orders dated 04.02.2016 and 01.11.2017. Accordingly, the orders dated 04.02.2016 and 01.11.2017 are set aside and the defendant-petitioner shall be permitted to file her written statement. Thereafter, the parties would lead their evidence in accordance with law.

The present revision petition is allowed subject to payment of costs of Rs.20,000/- to be paid to the respondents. Pending applications, if any, also stand disposed off.

08.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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