

122 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-485-2023
Date of decision:23.01.2023

SAHIRAM RAWAT

....Petitioners

Verses

ICICI BANK LTD. AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Balraj Gujjar, Advocate
for the petitioner.

Mr.Karan Gaba, Advocate for
Mr. Sandeep Suri, Advocate
for respondent No.1-ICICI Bank.

HARSIMRAN SINGH SETHI, J (Oral):

The present civil revision has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 28.07.2022 (Annexure P-6) by which the suit filed by the petitioner for declaration has been dismissed under Order 9 Rule 5 of CPC.

Learned counsel for the petitioner at the outset submits that the said order is not being challenged on merits but prays for another opportunity to rectify the irregularities which have occurred in filing of the civil suit, even if the same is on the basis of cost to be imposed on the petitioner. He further submits that as no proceedings have been initiated in pursuance to the suit filed, there is no prejudice which will be caused to the defendant, hence, one opportunity be granted to rectify the defects pointed out by the court below in the suit so that the notice of the suit could

be issued in respect of the prayer made by the petitioner in the said suit.

Notice of motion.

Mr. Karan Gaba, Advocate for Mr. Sandeep Suri, Advocate, put in appearance on behalf of respondent No.1-ICICI Bank and accepts notice. He submits that one opportunity was already given to the petitioner-plaintiff to rectify the mistakes occurred in filing of the civil suit, and as the petitioner failed to utilise the said opportunity given by the trial Court, the petitioner be not granted any further opportunity.

I have heard the learned counsel for both the parties and gone through the record.

The suit filed by the petitioner did not contain the documents required to be attached with the suit due to which the notice could not be issued to the respondents. It is a conceded position that the petitioner was given opportunities to rectify the mistake but he failed to avail the said opportunities and the Court has no option but to pass appropriate order keeping in view the fact that the requirement to be complied with while filing the civil suit, were not adhered to despite opportunities been granted by the court below.

As mentioned earlier, learned counsel for the petitioner has stated that he is not challenging the order on merits but he only prays for an another opportunity for rectifying the defects in filing of the civil suit so that, the *lis* between the parties could be adjudicated on merits. As only the suit has been filed so far by the petitioner-plaintiff and even notice is yet to be issued to the respondent-Bank, keeping in view the facts and circumstances of the present case, one more opportunity is granted to petitioner to rectify the mistakes which have occurred in filing of the civil

suit as pointed out by the trial Court.

The order dated 28.07.2016 is set aside with the clear indication that the parties will appear before the trial Court on the next date of hearing on which date, one more opportunity will be given to the petitioner-plaintiff to comply with the requirments necessary for filing the civil suit. It is made clear that in case, even after the grant of the said opportunity, the compliance is not made, the trial Court will be within its jurisdiction to pass an appropriate order afresh.

However the grant of opportunity as ordered hereinbefore will be subject to Rs.10,000/- as a cost to be paid by the petitioner to the Institute for the Blind, Sector-26, Near Homoeopathic Medical College & Hospital, Chandigarh.

23.01.2023
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(HARSIMRAN SINGH SETHI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>