

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**225****CR No.7845 of 2017****Date of Decision : 11.05.2023**

Madan

....Petitioner

VERSUS

Jawahar Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sushant Puri, Advocate for
Mr. Ankush Chowdhary, Advocate for the petitioner.

Mr. Krishan Sharma, Advocate for respondent No.1.

Service of respondent Nos.2 to 4 dispensed with
vide order dated 30.01.2018.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the order dated 08.08.2017 whereby the application for setting aside the *ex parte* order dated 21.04.2015 has partially been allowed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for specific performance of agreement to sell dated 10.11.2006 executed by defendant-respondent No.2 herein. Defendant No.4-petitioner herein was impleaded as a party as a subsequent purchaser. On 08.01.2013 defendant No.4-petitioner herein was proceeded against *ex parte*. Subsequently, an application was filed for setting aside the order dated 08.01.2013, however, the same was withdrawn vide the

statement made by the counsel on 12.11.2013. Thereafter, defendant No.4-petitioner herein continued to participate in the proceedings. Subsequently, the suit itself was dismissed in default on 04.03.2014. Thereafter, the same was restored vide order dated 21.04.2015. Vide the order dated 21.04.2015 defendant No.4-petitioner herein was proceeded against *ex parte*. An application was filed for setting aside the *ex parte* order on 13.09.2016 on the ground that due to some dispute between the counsel and defendant No.4-petitioner herein, defendant No.4-petitioner was not informed and notices were never received by him as he never resided at the given address. The Trial Court vide the impugned order dated 08.08.2017 set aside the *ex parte* order and directed defendant No.4-petitioner to contest the case and to lead evidence. Aggrieved by the order dated 08.08.2017, partially allowing the application permitting defendant No.4-petitioner to lead evidence, however, denying the defendant No.4-petitioner the right to cross-examine the witnesses of the plaintiff-respondent No.1, the present revision petition has been filed.

3. Learned counsel for the defendant No.4-petitioner would contend that once the Court had accepted the explanation given by the defendant No.4-petitioner, he should have been given an opportunity to cross-examine the witnesses of the plaintiff-respondent No.1. Learned counsel for the defendant No.4-petitioner would further contend that no prejudice would be caused to the respondents in case the defendant No.4-petitioner is allowed to cross-examine the witnesses and further that defendant No.4-petitioner is willing to compensate the respondents by way of costs. It has been brought to the notice of the Court that the written statement on behalf of defendant No.4-petitioner is already on the record.

4. *Per contra* learned counsel for the plaintiff-respondent No.1 has vehemently contended that these are delaying tactics which have been adopted by defendant No.4-petitioner herein inasmuch as even on an earlier occasion i.e. 08.01.2013, defendant No.4-petitioner was proceeded against *ex parte*, however, he continued to participate in the proceedings. Thereafter, the case was dismissed for non-prosecution and vide the order dated 21.04.2015 the suit itself was restored, however, defendant No.4-petitioner was proceeded against *ex parte*. Learned counsel for the plaintiff-respondent No.1 has further contended that inordinate delay has been caused in the trial because of the conduct of defendant No.4-petitioner herein.

5. Heard.

6. In the present case, no doubt defendant No.4-petitioner has been remiss, however, it is pleaded by defendant No.4-petitioner that due to a dispute with the counsel he was not aware of the proceedings and hence was proceeded against *ex parte* and his counsel also did not appear. It is trite that a party should not be made to suffer because of the fault of the counsel. However, there has been delay which has been caused in the trial because of defendant No.4-petitioner herein. In order to do complete justice between the parties, this Court deems it appropriate to modify the impugned order dated 08.08.2017 and grant two effective opportunities to defendant No.4-petitioner to cross-examine the witnesses of the plaintiff-respondent No.1, subject to payment of Rs.40,000/- as costs to be paid to the plaintiff-respondent No.1. It is made clear that payment of costs of Rs.40,000/- shall be a condition precedent.

7. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

11.05.2023
jk

(ALKA SARIN)
JUDGE

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