

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205

CR No.8235 of 2018

Date of Decision : 18.04.2023

Tharinderjit Singh

....Petitioner

VERSUS

Jhirmal Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.S. Dandiwal, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the order dated 13.08.2018 whereby the application for setting aside the order dated 24.04.2017 proceeding against the petitioner *ex-parte* has partly been allowed by the Trial Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for possession/joint possession by way of specific performance of agreement to sell dated 21.03.2014 alleged to be executed by defendant No.2-petitioner herein with regard to the land measuring 8 *marlas* situated in the revenue estate of Moga Mehla Singh I & II, Tehsil and District Moga. Vide order dated 24.04.2017 the defendant No.2-petitioner was proceeded against *ex-parte*. On 25.05.2018 an application for setting aside the *ex-parte* order dated 24.04.2017 was filed on the ground that the counsel did not inform the defendant No.2-petitioner and it was only two days prior to the filing of the application that the defendant No.2-petitioner came to know that he had been proceeded against *ex-parte*.

Vide the impugned order dated 13.08.2018 the said application has been partly allowed and the defendant No.2-petitioner has been permitted to join the proceedings from that stage only. Hence, the present revision petition.

3. Learned counsel for the defendant No.2-petitioner would contend that the defendant No.2-petitioner has not been permitted to file a written statement though the case is still at the stage of evidence of the plaintiff-respondent No.1 and only one witness has been examined so far. Learned counsel for the defendant No.2-petitioner would further contend that even the counsel for the plaintiff-respondent No.1 had suffered a statement to the effect that he had no objection if the application for setting aside the *ex-parte* proceedings was allowed subject to costs.

4. Notice was issued to the respondents, however, none has put in appearance on their behalf despite service. Hence, they are proceeded against *ex parte*.

5. I have heard learned counsel for the defendant No.2-petitioner.

6. In the present case, counsel for the plaintiff-respondent No.1 had categorically suffered a statement to the effect that he would have no objection if the application for setting aside the *ex-parte* proceedings was allowed subject to costs. Despite the statement having been made, though permission has been granted to join the proceedings, however, the defendant No.2-petitioner has not been permitted to file his written statement. The present suit is for specific performance based on the agreement to sell dated 21.03.2014 *qua* 8 marlas of land. The defendant No.2-petitioner would suffer irreparable loss and injury in case he is not permitted to file his written statement.

7. In view of the above and especially in view of the stand taken by the counsel for the plaintiff-respondent No.1 before the Trial Court, this Court deems it fit to modify the order dated 13.08.2018. Accordingly, the defendant No.2-petitioner is also granted permission to file his written statement as well as to join the proceedings.

8. The revision petition is disposed off in the above terms. Pending applications, if any, also stand disposed off.

18.04.2023
jk

(ALKA SARIN)
JUDGE

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