

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

112

CR-676-2023

Date of Decision :02.02.2023

Tarsem Kaur

...Petitioner

Versus

Gurmit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Bansal, Advocate for the petitioner.

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Harsimran Singh Sethi, J. (Oral)

The present revision petition has been filed by the petitioner, who is a defendant in the civil suit so as to challenge the order dated 09.12.2022 (Annexure P/3) by which, an application filed by another defendant namely, Narinder Singh for setting aside exparte order dated 14.02.2018, has been allowed by the trial Court as the plaintiff did not raise any objection for the grant of the said benefit.

Learned counsel for the petitioner-defendant argues that allowing the said application by the trial Court is causing prejudice to the petitioner-defendant as now the decision of the civil suit will take more time.

This argument noticed hereinbefore, raised by the learned counsel for the petitioner/defendant is not maintainable for the reason that the suit has been filed by the plaintiff, who is the master of the suit.

Petitioner along with others were arrayed as defendants. All the parties are

related to each other. One of the defendant was proceeded exparte and upon his application to allow the co-defendant to join the proceedings by setting aside the order proceeding the said defendant exparte, the plaintiff has raised no objection for setting aside the said exparte order so that the said defendant can participate in the proceedings so that Court can adjudicate the lis between the parties after giving due opportunity to all, the petitioner, who is also a defendant in the civil suit has no right to raise any objection to the said allowing of the application by which the exparte order qua the co-defendant of the petitioner/defendant has been set aside. Hence, the present petition which has been filed by the petitioner-defendant showing prejudice to her, is totally frivolous. No prejudice caused to the petitioner has been brought to the notice of this Court. If the trial Court in its wisdom has allowed a party to the suit to join proceedings and the plaintiff has no objection to the said order, the petitioner being a defendant cannot be permitted to raise a objection to the said order.

Learned counsel for the petitioner-defendant further argues that though, the defendant could have been allowed to join the proceedings but same should have been from the existing stage of the civil suit.

The said discretion is with the Court and can be exercised in case the plaintiff raises no objection qua the said fact. Once, the plaintiff raised no objection to allow the co-defendant/Narinder Singh to join proceedings and the Court in its discretion has allowed the filing of written statement, the petitioner, who is also a co-defendant cannot approach this Court to plead that co-defendant should not have been allowed the benefit of filing the written statement hence, the said argument cannot be accepted and is accordingly rejected.

Learned counsel for the petitioner-defendant further argues that there has to be substantial reason for setting aside the exparte order and only after showing sufficient cause, an exparte order could have been set aside by the trial Court. Learned counsel for the petitioner has also cited certain judgments to support his contentions.

In the present case, the plaintiff is the master of the suit, who is claiming certain benefits by filing the said civil suit. Once, the plaintiff has not raised any objection for setting aside the exparte order dated 14.02.2018 there was no requirement of the Court to deny the benefit of joining the proceedings to the defendant-Narinder Singh, who was proceeded exparte. Therefore, the judgement which are being cited by the learned counsel for the petitioner-defendant passed by the Coordinate Bench of this Court in CR-388-2022 titled as **Dalbir Kaur and another vs. Kashmir Singh and others** decided on 02.03.2022 as well as the judgment of the Delhi High Court in 2021 AIR CC 85 titled as **Sarjo Devi @ Saroj vs. Dharampal (deceased) through LRs and others** decided on 21.07.2020 are not applicable in the facts and circumstances of the present case.

With regard to the question of limitation in filing the application for setting aside the exparte order, the same can only be decided in case the application is being contested by plaintiff and as plaintiff has not raised the said issue rather conceded the application, hence, the said argument cannot be raised by co-defendant by wrongly placing reliance upon the cited judgments hereinbefore.

The present revision petition has been filed by the petitioner-defendant without showing any prejudice to her and can be termed as frivolous. In order to discourage such kind of litigation, the present revision

petition is dismissed with cost of Rs.10,000/- to be deposited with the Institute for the Blind, Sector 26, near Homeopathic Medical College and Hospital, Chandigarh.

February 02, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No