

279

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

**CR-1027-2023 (O&M)
Date of Decision: 22.03.2023**

Anand Kumar Jain

...Petitioner

Versus

Rama Shanker Yadav and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Aparna Singhal, Advocate
for Mr. Avnish Mittal, Advocate
for petitioner.

None for respondents.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of order dated 06.01.2023 (Annexure P-6) passed by Ld. Civil Judge (Jr. Division), Amloh, whereby application moved by defendant No.1/petitioner herein for setting aside *ex parte* order dated 03.4.2018 (Annexure P-3) and to allow him to contest the case, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Plaintiff/respondent No.1 filed a suit for permanent injunction restraining defendants from interfering in his peaceful possession over the suit property as a tenant and further restraining defendants from dispossessing plaintiff/respondent No.1 from the demised premises.

2.2. Upon issuance of notice, defendant No.1/petitioner appeared in the suit through his counsel, but he was advised by his counsel not to come regularly on every date and told that will be called upon when required. Thus, owing to the said reason and under the impression that he is being duly represented by a counsel, petitioner/defendant No.1 did not attend the Court on regular basis and learned

counsel for defendants suffered a statement on 03.04.2018 before the Ld. Court below

that he has no instructions on behalf of defendants and ultimately was proceeded *ex parte* vide order dated 03.04.2018 (Annexure P-3). Immediately on coming to know about the *ex parte* order, petitioner engaged a new counsel and moved an application for setting aside *ex parte* order dated 03.04.2018. The said application was contested by respondent No.1/plaintiff by filing a detailed reply. Ultimately, Ld. Trial Court vide impugned order dismissed the application for setting aside *ex parte* order.

3. None appears on behalf of respondent No.1, despite service, which is suggestive of the fact that he does not want to contest the revision petition and consents to same being allowed.

4. Having perused the record and after hearing learned counsel for petitioner/defendant No.1, I am of the view that impugned order passed by Ld. Court below is manifestly erroneous and is the result of material irregularity and even otherwise required procedure was not followed while proceeding *ex parte* against petitioner/defendant No.1 herein.

5. Conceded position, as noticed by Ld. Trial Court as on the date of proceeding *ex parte* against petitioner/defendant No.1, was that he was though duly represented by his counsel who declined to participate in the proceedings by making statement that he had no instructions from his client i.e., the petitioner herein. In the premise, Ld. Trial Court ought to have issued a fresh notice to the petitioner/defendant No.1 to make him aware that his counsel has pleaded no instructions to assist the Court and/or participate in further proceedings so as to enable the petitioner to make alternative arrangements to engage another counsel or to join in person, as the case may have been. Ld. Trial Court did not do this but merely on the statement of learned counsel representing petitioner it chose to proceed *ex parte*. While on the other hand, there is nothing on record to show that learned counsel appearing on the fateful day having told Ld. Court below that he has no instructions, had informed defendant No.1 of his having been proceeded *ex parte*. In the premise, in all likelihood, there was no

occasion for petitioner/defendant No.1 to have come to know of his being proceeded *ex parte* and in between there was a long zero period during which the Courts were rendered dysfunctional owing to the global pandemic when the entire work came to a standstill. On the resumed working of Courts, only urgent matters were taken up to begin up and most of the trials were got adjourned and no evidences were being recorded. In such a scenario, petitioner/defendant No.1 had no way to assume that he was unrepresented and he was naturally under the impression that nothing worthwhile was happening and more especially when he had engaged a lawyer who was taking care of everything in his absence. It was only after normal resumption of working of Courts that he tried to discover about his case and found that he was proceeded *ex parte* and he took steps to file application for recalling of *ex parte* order dated 03.04.2018 (Annexure P-3). Learned Trial Court disbelieving the contents of his application dismissed the same vide order impugned herein.

6. As already noted and for the reasons stated herein above, Ld. Trial Court ought to have proceeded more cautiously in matters pertaining to this case pre-pandemic period coupled with the fact of learned counsel for defendant No.1 pleading no instructions.

7. In the premise, revision is allowed and the impugned order is set aside. Ld. Trial Court to proceed further with trial by granting one effective opportunity to petitioner/ defendant No.1 to file his written statement.

8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 22, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No