

CR-1218-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: May 01, 2023

Singh Ram

....Petitioner

versus

Gram Panchayat, Nayagaon

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. G.C. Shahpuri, Advocate for petitioner.

Mr. Krishan Singh, Advocate for respondent.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for quashing/ setting aside order dated 21.12.2018 (Annexure P-4) passed by learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, whereby application under Order IX Rule 13 of Code of Civil Procedure, 1908 (for short 'CPC') filed by respondent-Gram Panchayat, was allowed.

2. The revision petition is premised on the averments that petitioner-plaintiff filed civil suit for possession of land measuring 35.44 sq. yards out of Khasra No.131 by removing bricks placed therein by defendant and for recovery of mesne profits at the rate of Rs.1,000/- per month from the date of filing of suit *pendent lite* till delivery of possession thereof. None had appeared on behalf of respondent-Gram Panchayat and it was proceeded *ex parte* vide order dated 28.01.2014. Thereafter, learned trial Court decreed the suit of the plaintiff vide judgment/ decree dated 17.08.2016 (Annexure P-1) to the effect that plaintiff is entitled to possession of suit land by removing bricks placed therein.

2.1. Plaintiff filed execution application. Respondent filed application (Annexure P-2) under Order IX Rule 13 read with Section 151 CPC for setting aside *ex parte* order dated 28.01.2014 as well as *ex parte* judgment/decreed dated 17.08.2016 (Annexure P-1).

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2.2. Vide impugned order dated 21.12.2018 (Annexure P-4), learned trial Court allowed the aforesaid application whereby *ex parte* order dated 28.01.2014 and *ex parte* judgment/decreed dated 17.08.2016 were set aside.

3. I have heard learned counsel for the parties and perused case file.

4. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. Prejudice would indeed be caused to respondent unless afforded an opportunity to file written statement.

5. Having heard learned counsel for the parties, I am of the view that in order to balance the equities by providing fair opportunity to respondent-Gram Panchayat one opportunity is granted to file written statement by setting aside impugned *ex parte* judgment/ decree, who seems to have been proceeded against *ex parte* due to some mis-communication between it and counsel whom it had engaged and there was some default in causing appearance on its behalf. It is made clear that in case, written statement is not filed within 30 days from today, *ex parte* judgment/ decree shall automatically come into operation with liberty to petitioner to seek its execution. In case, written statement is filed, learned trial Court shall proceed further with the matter, but shall not grant more than two effective opportunities to respondent to adduce its evidence and decide the case afresh, in accordance with law.

6. Disposed of accordingly.

7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 01, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No