

130 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2830-2023 (O&M)
DECIDED ON: 14.09.2023

RAJESH KUMAR ALIAS RAJESH GUPTA

.....PETITIONER

VERSUS

TARSEM KUMAR ALIAS TARSEM MAHAJAN

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Amit Gupta, Advocate for
Mr. Abhishek Khullar, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

CM-15291-CII-2023

Prayer in the present application is for placing on record copies of all interlocutory orders passed by the trial Court in the civil suit in question as Annexure P-6 to Annexure P-82.

For the reasons mentioned in the application, the same is allowed and the interlocutory orders are taken on record as AnnexureP-6 to AnnexureP-82. The Registry is directed to tag the same at an appropriate place in the case file.

CR-2830-2023

1. Mr. Vishal Sharma (Vasudeva), Advocate has put in appearance on behalf of the respondent and has filed his power of attorney.
2. The present revision petition is directed against the order dated 06.04.2023 (Annexure P-4) vide which the application filed by the petitioner-defendant for setting aside the order dated 24.11.2022 (Annexure P-2) vide which the petitioner-defendant had been proceeded against ex parte was

dismissed.

3. The petitioner was a defendant in a civil suit bearing No.CS/1022/2017 titled as Tarsem Kumar @ Tarsem Mahajan Vs. Rajesh Kumar @ Rajesh Gupta and Another. He was proceeded against ex parte in the said suit on 24.11.2022 and the application filed for setting aside the said order was also dismissed vide order dated 06.04.2023 leading to the filing of the present revision petition.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner has submitted that the non-appearance of the petitioner-defendant before the trial Court on 24.11.2022 was unintentional. Reference has been made to the interlocutory orders (Annexure P-6 to Annexure P-82) and it has been submitted that the petitioner-defendant was regularly appearing before the trial Court. It has been submitted that no doubt the petitioner was proceeded against ex parte on two previous occasions also but the interlocutory orders would show that on the very next date and without any delay, applications for setting aside the said orders had been moved. It has been contended that petitioner-defendant be given an opportunity to defend the case.

6. On the other hand, learned counsel for the respondent-plaintiff has submitted that the petitioner-defendant was repeatedly absenting from the proceedings as a result of which he was proceeded against ex parte on two previous occasions leading to an unnecessary delay in the conclusion of the trial. It has been submitted that even on 24.11.2022, when the matter was fixed, neither the petitioner-defendant nor his counsel appeared for the whole day as a result of which, the petitioner-defendant was proceeded against ex parte. It has been submitted that the conduct of the petitioner-defendant is

such that no further opportunity deserves to be granted to him.

7. I have considered the submissions made by learned counsel for the parties.

8. A perusal of the interlocutory orders (Annexure P-6 to AnnexureP-82) would show that the suit came up before the trial Court for the first time on 18.08.2017 when notice was issued to the petitioner-defendant. The petitioner-defendant duly put in appearance before the trial Court on 25.09.2017 and the written statement was filed on 25.01.2018. Issues were framed on 08.03.2018 and thereafter the suit remained pending for evidence of the respondent-plaintiff. In between, on two occasions i.e. on 09.08.2018 and 25.07.2019, the counsel for the petitioner-defendant did not appear as a result of which the petitioner-defendant was proceeded against ex parte. The interlocutory orders also show that applications for setting aside the said orders were moved without any delay and they were set aside also by the trial Court. The interlocutory orders further show that the respondent-plaintiff availed numerous opportunities for leading evidence but the same was not concluded.

9. Eventually on 24.11.2022, the petitioner-defendant was again proceeded against ex parte. An application was moved immediately for setting aside the said order but the same was dismissed by the trial Court on 06.04 2023 on the ground that application for setting aside the order dated 24.11.2022 had been filed after more than three months and further that on two previous occasions, the petitioner-defendant had been proceeded against ex parte.

10. In the considered opinion of this Court, the trial Court should have acceded to the request of the petitioner-defendant keeping in view the fact that at no point of time, the petitioner-defendant made any efforts to delay

the proceedings and on the contrary, the respondent-plaintiff availed numerous

opportunities for leading evidence right from 2018 till 2023. Be that as it may, in the considered opinion of this Court, the petitioner-defendant does deserve to be granted another opportunity to defend his case.

In view of the above, the present revision petition is allowed and the order dated 06.04.2023, vide which the application filed by the petitioner-defendant for setting aside the order dated 24.11.2022 was dismissed, is set aside. Consequently, the order dated 24.11.2022 is also set aside and the petitioner-defendant is permitted to defend the suit. However, any further default on part of the petitioner-defendant shall be dealt with in accordance with law and no further opportunity shall be granted to the petitioner-defendant in case such a default occurs again. The allowing of the present revision petition shall be subject to payment of costs of ₹5,000/- to be payable to the respondent-plaintiff.

(VIKRAM AGGARWAL)
JUDGE

14.09.2023

Prince Chawla

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