

CR-2828-2023 (O&M)

114

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2828-2023 (O&M)

Date of decision: May 08, 2023

Amit Kansal

...Petitioner

versus

Gagan Jot Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. J.S. Jaidka, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 16.01.2023 (Annexure P-2) passed by learned Civil Judge (Junior Division), Kharar (for brevity, 'trial Court'), whereby petitioner-defendant No.3 along with other defendants was proceeded against *ex parte*. Further sought to set aside impugned order dated 05.04.2023 (Annexure P-4) passed by learned trial Court, whereby application seeking to set aside aforesaid order dated 16.01.2023, was also dismissed.

2. The revision petition is premised on the averments that respondent No.1-plaintiff filed a suit for mandatory injunction *inter alia* directing defendants No.1 and 2 to execute sale deed of land in question in favour of plaintiff. Vide impugned order dated 16.01.2023 (Annexure P-2), defendant No.3 along with other defendants was proceeded against *ex parte*. Further vide impugned order dated 05.04.2023 (Annexure P-4), application filed for setting aside aforesaid order of *ex parte* was also dismissed.

3. Learned counsel for petitioner-defendant No.3 would contend that since amendment in the plaint of plaintiff was allowed on 16.01.2023, therefore, setting aside of *ex parte* order against petitioner shall in no way cause any loss to

CR-2828-2023 (O&M)

plaintiff. He would further argue that even the stipulated time as mandated under the Code of Civil Procedure was not granted to file written statement to the amended plaint.

4. Considering the nature, facts and circumstances of the case, issuance of notice to respondent No.1-plaintiff seems unnecessary and is, therefore, dispensed with.

5. I have heard learned counsel for petitioner and perused the case file.

6. Impugned order dated 05.04.2023 (Annexure P-4) passed by learned trial Court on application seeking to set aside *ex parte* order dated 16.01.2023 (Annexure P-2), is premised, *inter alia*, on the following reasoning:

“19. Perusal of the file shows that on earlier occasions also defendants no. 1 and 2 were proceeded ex parte on dated 26.07.2018 and respondent no.3 was proceeded ex parte vide order dated 17.02.2018. Thereafter ex parte proceedings passed against defendant no.3 was set aside vide order dated 24.03.2021 subject to cost of Rs.500/- but the said defendant did not pay the cost on 12.07.2021, 13.10.2021 and 23.12.2021 and again on dated 20.05.2022 defendants no.1 to 3 got absented and defendants no. 1 to 3 again proceeded against ex parte on said date. Thus, it is apparent that the conduct of the applicants/defendants is not sincere in the present case.

20. On previous occasions also keeping in view of the cardinal principle of law that no one shall be condemned unheard and that a lis shall be decided on merit, applicants were given an opportunity to defend the case but applicants showed no diligence in pursuing with the present case.

21. The court is of the opinion that defendants are playing hide and seek with the court and not acting with due diligence. On earlier occasion also the court made effort to decide the present case on merits by hearing both the parties including the present applicants/defendants but their lackadaisical approach shows that they do not deserve any leniency. It is settled law that the tendency of unnecessary adjournment on the drop of hat on a request of a counsel shall be curbed. Therefore, the court is of the opinion from the previous conduct of the applicant/defendants deserves no leniency and they shall be granted opportunity to linger on and drag the case as much as they can at their whims and fancies.

22. The reason which have mentioned by applicant no.1 and 2 for their absence is not sustainable as from zimini order it is apparent that on the date when they were proceeded ex parte no proxy counsel appeared on their behalf. Moreover, the contents of the application of above mentioned applicants no. 1 and 2 are contradictory itself as at one hand there are contending that local counsel Mr. Abhishek Bhardwaj had appeared and apprised the Reader of this court with

regard to pending proceedings and requested to mark his presence and when in the evening the aforesaid regular Advocate came to enquire about the proceedings of the case and the next date of hearing, he was informed that defendants no.1 to 3 have been proceeded against ex parte in the said matter. Then the said counsel immediately informed the regular counsel and the applicants main counsel Sh. Rajan Malhotra appeared during pre-lunch session and had apprised the Reader about the proceedings of the captioned matter with a request to mark his presence, however, inadvertently his presence was not marked when the orders of ex parte against the applicants were passed in the evening and same is communicated to him by said alleged proxy counsel after knowing about proceeding in evening then how the regular counsel had appeared during lunch session is beyond any stretch of imagination.

23. Further the contents of the applicant/defendant no.3 that regular counsel has noted down the date 27.05.2022 instead of 20.05.2022 is also sustainable because in the CIS system the next date and the business/proceedings of the case is uploaded within 48 hours nowadays. Further the facility of intimation through SMS on the registered number of the respective counsels regarding next date and proceeding for the purpose is also available. Therefore, the court is of the opinion that the ground which have been mentioned by the applicant for setting aside their proceedings are not sufficient and reasonable.

24. The case is pertaining to the year 2016 and is linger on for its verge of conclusion due to perpetual absence of the applicants/defendants, hence the court is of the opinion that the application does not hold any merit. Accordingly both the applications in hand are hereby dismissed being without any merit.”

7. I see no reason to interfere with the orders impugned herein since petitioner-defendant No.3 was proceeded *ex parte* only on the particular day i.e., 16.01.2023 before learned Court below when he remained unrepresented. On a Court query, learned counsel for petitioner concedes that he has no objection to the amendment of the plaint as allowed vide impugned order as long as he is permitted to file amended written statement. Perusal of the impugned orders does not reflect as if right of defendant No.3-petitioner to file written statement has been forfeited. He is at liberty to do so in accordance with law. Further, it is made clear that proceeding *ex parte* on 16.01.2023 on a particular day would not be construed to mean that petitioner is proceeded *ex parte* for rest of the trial. He is at liberty to appear and participate in the subsequent proceedings of trial in accordance with

CR-2828-2023 (O&M)

- 8. Disposed of, accordingly.
- 9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 08, 2023
mahavir

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