

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3796-2023
Date of Decision:-17.07.2023

SAMEY SINGH

... Petitioner

Versus

PURAN SINGH AND ANR.

... Respondents

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Diwan S. Adlakha, Advocate
for the petitioner.

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KARAMJIT SINGH, J. (Oral)

1. The present revision petition has been filed by the petitioner/defendant No.1 for setting aside the impugned order dated 13.9.2022 passed by the Court of Civil Judge (Junior Division), Bilaspur District Yamuna Nagar, whereby the application filed by the petitioner for setting aside ex-parte proceedings against him in civil suit titled Puran Singh vs. Samay Singh and Ors. has been dismissed.
2. The counsel for the petitioner submits that on receiving the notice, the petitioner put in appearance in the learned trial Court in the aforesaid civil suit and marked his presence through his counsel on 30.4.2018. Thereafter, the petitioner continuously appeared through his counsel

before the learned trial Court till 24.5.2019 and the suit was adjourned to 10.7.2019. That in the meantime, the counsel told the petitioner that in future, the presence of the petitioner is not required in the trial Court and the counsel assured him that he will pursue the case on his behalf and due to same reason the petitioner did not appear in the trial Court on 10.7.2019 and consequently he was proceeded against ex-parte on that date by the trial Court vide order (Annexure P-4). When the petitioner came to know about the said order, he immediately filed an application dated 17.01.2020 (Annexure P-5) for setting aside ex-parte proceedings against him but the said application was dismissed by the trial Court vide impugned order dated 13.9.2022. The counsel for the petitioner further submits that there are sufficient grounds to set aside the ex-parte proceedings against the petitioner and even otherwise the learned trial Court took about 2 years to decide the application (Annexure P-5). It is further submitted that order dated 10.7.2019 (Annexure P-4) was passed by the learned trial Court just on account of single default on the part of the petitioner and the reason for the said default has been fully explained by the petitioner.

3. I have heard the counsel for the petitioner.
4. It is settled position that substantive justice is to prevail over the procedural law to meet ends of justice. This Court is of the view that the petitioner has provided a good cause for his absence on the date, he was proceeded against ex-parte. Even otherwise, the interest of justice demands that petitioner should be given a chance to contest the suit, otherwise, serious prejudice would be caused to the petitioner and

further to prevent the miscarriage of justice, the presence of the petitioner before the learned trial Court is necessary. So the impugned order (Annexure P-7) dated 13.9.2022 and order dated 10.7.2019 (Annexure P-4) are liable to be set aside, in the interest of justice. However, as the setting aside of ex-parte proceedings sought by the petitioner has delayed the proceedings in the trial Court, for which the prejudice being caused to the respondent/plaintiff and as such, he is entitled to get cost.

5. In the light of above discussion, the impugned order dated 13.9.2022 (Annexure P-7) and 10.7.2019 (Annexure P-4) are hereby set-aside subject to cost of ₹15,000/-, which is to be paid by the petitioner to respondent/plaintiff on the next date of hearing fixed before the learned trial Court.
4. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party. If the respondents are summoned to contest this litigation, they will have to incur huge expenses to defend this case. However, liberty is granted to the respondents that if they feel dissatisfied with this order, they may move an application to recall the same.
5. The petition stands disposed of in the aforesaid terms.

17.07.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?Yes / No

Whether reportable?Yes / No