

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.123

Case No. : C. R. No. 3021 of 2023

Date of Decision : August 21, 2023

Sunita Rani Petitioner
vs.
Varinder Kumar and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Chetan Bansal, Advocate
for the petitioner.

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GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 10.02.2023 (Annexure P-1), passed by learned Civil Judge (Junior Division), Hoshiarpur (for brevity - the Trial Court), whereby the application filed by respondent no.1, for setting aside the ex-parte order dated 06.07.2022, has been allowed.
2. As per the case of the petitioner, she filed a suit (Annexure P-2), in which ad-interim injunction was issued, restraining the respondents from forcibly dispossessing the petitioner from the suit property. The respondents were duly served in the suit and despite having knowledge of passing of the injunction order, they interfered in the peaceful possession of the petitioner by demolishing the shed situated at the suit property and also by started parking their vehicles over the suit property.
3. The petitioner moved an application under Order 39 Rule 2-A

CPC for initiating contempt proceedings against the respondents. Thereafter, the respondents did not appear in the Court to lead evidence or to examine the witnesses. So, they were proceeded against ex-parte. Then, respondent no.1 mischievously filed an application for setting aside the ex-parte order, on the ground that he could not appear in the Court on 06.07.2022 due to health problem. He is 78 years old and his wife was also suffering from heart problem and was being treated at PGI, Chandigarh.

4. Learned counsel for the petitioner has argued that respondent no.1 intentionally did not appear in the Court. No record was produced regarding admission of his wife in the hospital or when her surgery was performed. It was argued that respondent no.1 was required to assign good cause for his non-appearance but there is no sufficient ground to set aside the ex-parte proceedings. Only respondent no.1 could have been allowed to join the proceedings from the stage when he again appeared before the Court.

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

6. Respondent no.1 had already filed written statement, although after taking certain adjournments. He absented from the Court on 06.07.2022. The application for setting aside the ex-parte order was moved on 11.11.2022 mainly on the ground that respondent no.1 is an old man of 78 years and he could not appear in the Court on 06.07.2022 due to health problems. His wife was suffering from heart problem and in the month of July 2022, she was being treated at PGI and stunt was also affixed to her wife. Therefore, he could not attend the court proceedings.

7. Procedure is hand-maid to the administration of justice and is

meant for advancement of justice. Respondent no.1 is an old man of 78 years. Learned Trial Court has held that it is one of the cardinal principles of justice that no party should be condemned unheard and a lis should be culminated on merits and not on the technicalities. Further, no prejudice would be caused to the other party by allowing the application. The learned Trial Court set aside the order of proceedings against ex-parte keeping in view the natural justice. There is no ground to disbelieve the version of respondent no.1 regarding ailment of his wife. His absence from the Court cannot be considered to be without any cause.

8. I do not find any illegality in the order passed by the learned Trial Court. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

9. Pending applications, if any, shall stand disposed of along with this judgment.

August 21, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.