

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-1460-2021 (O&M)

Date of Decision:10.04.2023

Bhoop Singh

.....Petitioner

Versus

Bhagirath and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vinod Bhardwaj, Advocate for the petitioner.

Mr. Yagsimant Attri, Advocate for respondent No.1.

HARSIMRAN SINGH SETHI J.(Oral)

The present revision petition has been filed for setting aside the order dated 03.08.2017 (Annexure P-1) by which the petitioner was proceeded exparte as well as the order dated 16.07.2021 (Annexure P-3) vide which the application filed for setting aside the said ex parte order has been dismissed. Learned counsel for the petitioner argues that in the present case without any valid service being effected, the impugned order dated 03.08.2011 was passed against the petitioner proceeding him ex parte and even his subsequent application for setting aside the said exparte order has been dismissed by the Court below on 16.07.2021 without recording any valid justification

Learned counsel submits that once the application for setting aside the ex parte order was filed, the same could have been considered with the objective that the parties need to be given due opportunities to defend themselves

and in case, there was any delay caused due to any act on the part of the petitioner, the respondents could have been compensated by way of costs, hence, the order passed by the Trial Court dated 03.08.2017 as well as 16.07.2021 (Annexures P-1 and P-3) respectively, may kindly be set aside even if the same is to be done imposing costs upon the petitioner.

Learned counsel for the respondents on the other hand submits that the procedure adopted by the Court below was in accordance with law as there is a report of refusal of accepting service of summons on the part of the petitioner and he did not join suit proceedings only to delay the same hence, no benefit of subsequent application seeking joining the proceedings could have been given to the petitioner and the orders passed by the Court below are perfectly valid and legal.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Though, there is no ground to accept the arguments of the learned counsel for the petitioner that the impugned orders were passed in an arbitrary manner but keeping in view the settled principles of law all the disputes between the parties should be decided on merits as far as possible after extending due opportunity to present their cases and in the present case once the application was filed by the petitioner for setting aside the ex parte order, the same could have been allowed by imposing costs upon the petitioner so as to compensate the respondents with regard to the delay which has occurred. It is only in the extreme circumstances such as where the application for setting aside the ex parte order is moved at the fag end of the trial, the same could be denied if the facts and circumstances of the case demand so.

Keeping in view the above, the impugned orders are set aside and the petitioner is allowed to join the proceedings. For the delay which has occurred due to the act on the part of the petitioner, as undertaken by the counsel for the petitioner, the present petition is allowed subject to the payment of Rs.10,000/- as costs to be given to the respondents.

CM-5854-CII-2022

Application is disposed of.

(HARSIMRAN SINGH SETHI)

JUDGE

10.04.2023

Shweta

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