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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CR-3800-2023 (O&M)  
Decided on : 31.08.2023

Urmila Devi

. . . Petitioner(s)

Versus

Balwan and another

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

PRESENT: Mr. Sanjiv Gupta, Advocate  
for the petitioner(s).

Mr. Sushil K. Verma, Advocate  
for respondent No.1.

Mr. Virender Kumar, Advocate for  
Mr. Manish Raj Choudhary, Advocate for respondent No.2.

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**SANJAY VASHISTH, J. (Oral)**

1. Present revision petition has been filed by one Urmila Devi, who is defendant No.1 in the suit proceedings.

2. Two orders have been challenged in the present revision petition i.e. :

- (i) Order dated 06.04.2022, whereby, petitioner (defendant No.1) has been proceeded against *ex-parte*;
- (ii) Order dated 06.03.2023, vide which, application for seeking setting aside of the *ex-parte* proceedings, has been dismissed, on account of non-appearance of the petitioner (defendant No.1).

3. Counsel for the petitioner argues before this Court that in fact, petitioner (defendant No.1) was never served any notice for her appearance in the civil suit proceedings. Petitioner has also taken a plea that respondent

No.2 – Jeet Ram (defendant No.2) was undoubtedly, a General Power of

Attorney (GPA) of defendant No.1 (petitioner herein), but he has played a fraud upon her i.e. petitioner (defendant No.1).

4. Counsel for the petitioner (defendant No.1) submits that on the day, when summons in the civil suit were alleged to be served, it was reported to the Court that defendant No.2 has refused to accept the summons. Counsel further submits that in fact, said finding is incorrect because petitioner (defendant No.1) is married and presently residing at village Birdana, District Fatehabad, and same address has been mentioned in the memo of parties appended with the present revision petition also. The address of GPA of petitioner mentioned in the Civil Suit by respondent No.1 (plaintiff) was incorrect for the purpose of affecting a valid service upon the petitioner (defendant No.1).

5. However, without arguing much on the merits of the case, counsel for the petitioner (defendant No.1) submits that trial has not progressed much and proceeding is now fixed for recording of the *ex-parte* evidence of the plaintiff. Thus, counsel prays that the order dated 06.04.2022 to the extent of making observation for *ex-parte* proceedings, and the application, which was dismissed for non-appearance vide order dated 06.03.2023, be set-aside on merits by granting one chance to the petitioner of her appearance, or to save the time, this Court may set-aside the base order dated 06.04.2022 *qua* proceeding *ex-parte* against the petitioner, and then to allow the petitioner (defendant No.1) to join the proceedings by way of filing the written statement. Counsel for the petitioner also submits that petitioner is even ready to pay cost to the satisfaction of the Court.

6. On the other hand, counsel for the respondents have vehemently opposed the prayer made in the petition by submitting that intention of the

petitioner (defendant No.1) is only to get out of the agreement to sell executed by her GPA – Jeet Ram (defendant No.2), and for the purpose of causing harassment to the plaintiff – Balwan, proceedings are being delayed by defendant No.1 in collusion with defendant No.2. Thus, the story propounded by the petitioner (defendant No.1) is absolutely false, which does not appeal to the person of the ordinary prudence.

It is also submitted by counsel for respondent No.1 – Balwan (plaintiff) that petitioner does not deserve any leniency on account of the fact that even after filing of an application for setting aside the order, vide which the petitioner (defendant No.1) was proceeded against *ex-parte*, she intentionally chose not to appear for arguing the said application. Thus, the person like the petitioner, who plays hide & seek with the Court, does not deserve any concession on the principle of equity.

7. I have heard counsel for the parties and perused the record of the case with able assistance of counsel for the parties.

8. Undoubtedly, order dated 06.03.2023 passed by the Trial Court dismissing the application for setting-aside the order vide which petitioner was proceeded *ex-parte*, is on account of non-appearance of the petitioner/applicant/defendant No.1. However, considering the circumstances in its totality, I deem it appropriate that to dilute the intention of defendant No.1 (petitioner herein), if at all it does exist, her appearance and presence before the Court in the suit proceedings, would meet the ends of justice and it would be helping to avoid the delay in final decision on the issue in question, on its merits.

9. For the said purpose, I do not feel it necessary even to give her chance to go back to the Trial Court and to argue the application for

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challenging the order, vide which, she was proceeded against *ex-parte*, because in that case, it would further cause delay and may serve the alleged purpose of the defendants.

10. Considering all the circumstances, order dated 06.04.2022 is hereby **modified** only to the extent of *ex-parte* proceeding *qua* defendant No.1, and further, it is made clear that she is allowed to join the proceedings, and to file her written statement at the earliest, but not later than 22<sup>nd</sup> September, 2023.

Further, it is also made clear that looking at the doubtful conduct of the defendants, stay order dated 06.04.2022 passed by the Trial Court is not at all disturbed, and same would be considered as continued against defendant No.1 also, though defendant No.1 may also challenge the same on merits, as per law. Even, order dated 06.03.2023, shows that after acknowledging the *ex-parte* proceedings against her in the present suit, the application was filed, but even same was dismissed due to her non-appearance in the proceedings.

11. To explain her non-appearance in the application for setting-aside *ex-parte* proceedings, nothing much has been said even in the present revision petition. However, order dated 06.03.2023, in regard to the dismissal of the application would be considered as of no consequence, once this Court has exercised its power by modifying the order dated 06.04.2022, whereby, only the *ex-parte* proceedings have been set-aside *qua* the petitioner (defendant No.1).

It is, however, made clear that said concession has been made available to the petitioner (defendant No.1) subject to the payment of total cost amount of **Rs.35,000/-**, out of which, **Rs.10,000/-** would be payable to

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respondent No.1 – Balwan (plaintiff), and remaining cost amount of Rs.25,000/- would be deposited with the poor patient fund in the name of “Bhai Kanhaiya Manav Sewa Trust” A/c No.50100265537014, IFSC Code: HDFC0000610, Sangwan Chowk, Sirsa.

With the aforementioned terms and observations, **present revision petition stands disposed of.**

**(SANJAY VASHISTH)**  
**JUDGE**

**August 31, 2023**

*J.Ram*

*Whether speaking/reasoned:*      *Yes/~~No~~*

*Whether Reportable:*                *Yes/~~No~~*