

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

282

CR-3930-2023 (O&M)

Date of decision: 18.12.2023

BALWINDER SINGH

.... Petitioner

Versus

DHALWINDER SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Paramjit Singh Bal, Advocate, for the petitioner.

GURBIR SINGH, J. (Oral)

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 11.05.2023 (Annexure P-5) passed by learned Addl. Civil Judge (Senior Division), Amloh whereby application filed by the petitioner for setting aside the order dated 29.09.2022 has been dismissed with a further prayer that orders dated 29.09.2022 and 22.08.2019 passed by learned Additional Civil Judge (Senior Division) Amloh kindly be set aside whereby the petitioner has been proceeded against ex-parte.

2. The brief facts, as culled out from the petition, are that the respondent-plaintiff (hereinafter called, "plaintiff") has filed a suit for specific agreement to sell dated 12.06.2017. The petitioner was not served and was proceeded against ex-parte vide order 22.08.2019. Thereafter the petitioner moved an application to set aside the order and learned trial Court allowed the application for setting aside the ex-parte order subject to cost of Rs.4000/-.

3. Learned counsel for the petitioner submits that trial Court counsel never informed him about the next date of hearing and as regards amount of

statement. The petitioner changed the counsel and then he came to know that he was again proceeded against ex-parte. He further submits that the petitioner would be satisfied if one opportunity is granted to the petitioner to file written statement.

4. Though there is some inaction on the part of the petitioner -defendant, he failed to file written statement, but keeping in view the fact that procedure is handmaid to the administration of justice and it is meant for advancement of justice, the petitioner should not be non-suited merely on procedural technicalities and no prejudice would be caused to the respondent-plaintiff if one opportunity is given to the petitioner-defendant as he can be compensated with costs, so the impugned order deserves to be set aside.

5. In view of above, the order dated 11.05.2023 (Annexure P-5) is hereby set aside and one opportunity is granted to the petitioner-defendant to file written statement to the suit, however, that would be subject to payment of costs of Rs.15,000/- to be paid to the respondent-plaintiff. The petitioner-defendant shall file written statement before the trial Court on 12.01.2024 or on the very next date of hearing. In case of default, this order shall automatically stand vacated.

6. Present petition stands disposed of accordingly.

7. If the respondent-plaintiff is not satisfied with this order, he can move an application for recalling of this order within 30 days.

(GURBIR SINGH)
JUDGE

December 18, 2023

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No