

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

C.R. No. 5387 of 2023

Date of Decision: 15.09.2023

Rahul

.....Petitioner

Versus

Mahabir Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present:- Mr. Simar Bedi, Advocate,
for the petitioner.

GURBIR SINGH, J.

1. Challenge in this petition under Article 227 of the Constitution of India is to order dated 19.08.2023 whereby application filed by the respondent-defendant for setting aside the ex parte order dated 09.12.2021 has been allowed.

2. Counsel for the petitioner has submitted that application was filed after a period of more than two years and no sufficient cause was shown as to why defendant failed to put in appearance in the trial Court and to file written statement. The defendant-respondent had put in appearance on 09.09.2019 but he failed to file the written statement. On 12.07.2021, the defendant was given last opportunity to file written statement, failing which, his defence would be struck off. On 29.09.2021, one more last opportunity was granted to the respondent-defendant to file written statement subject to payment of costs of Rs.1000/- on the next date i.e.

09.12.2021. The defendant-respondent did not appear before the Court on the said date also and was proceeded against *ex parte*. The reason given by the defendant-respondent for non-appearance is that he lost his wife and there was an outbreak of COVID-19 in the year 2020. As the respondent-defendant was being represented through counsel, so the written statement could have been filed through him and personal presence of defendant was not necessary at all. It is further argued that respondent-defendant has also filed a petition under Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The petitioner has already filed the objections to the same. The defendant had been appearing in the said petition but he intentionally did not appear in civil suit. The defendant is not a senior citizen as in his Aadhar Card, his age is shown as 54 years. The impugned order deserves to be set aside.

3. I have heard the submissions of the learned counsel for the petitioner.

4. The suit filed by the plaintiff-petitioner against his father for declaration and consequential relief of injunction, is on the ground that plaintiff-petitioner has become owner of the suit property in pursuance of the family settlement. The plaintiff-petitioner is in possession of the suit property and does not want to alienate the same. No doubt, there was some inaction on the part of the defendant-respondent. The defendant-respondent is an old man and there is no dispute that in March 2020, there was an outbreak of COVID-19 Pandemic. After few months, the Courts

had started restrictive functioning. Then second wave of COVID-19 Pandemic came in the mid of April, 2021, which had lasted for few months. During this period, many people had died. The medical advisories were being given to the aged persons to avoid coming in the public. There were exceptional circumstances prevailing in the entire world. It is well settled that a person cannot be non-suited due to some mistake. It is duty of each and every Court to decide the case on merits. The learned trial Court relying on the decision of Delhi High Court passed in the case of ***Rahul Vaid vs. Balraj Vaid and others, 2015(4) Civil Court Cases 266 (Delhi)*** has rightly held that where vital rights to an immovable property are involved, negligence is not such that it cannot be condoned by making payment of costs to plaintiff considering that valuable rights in an immovable property is involved. Although, respondent-defendant was proceeded against ex parte but the plaintiff-petitioner even had failed to conclude his evidence for such a long. Learned trial Court has properly compensated the plaintiff-petitioner with costs. It is well settled that there is no limitation prescribed for filing an application for setting aside the *ex parte* proceedings under Order 9 Rule 7 CPC. Moreover, plaintiff-petitioner has filed suit against his father. It is family dispute. Whether defendant is senior citizen or not is not required to be seen in this petition.

5. In view of the above, I do not find any illegality or perversity in the impugned order passed by the trial Court. Petition seems to be

without any merit and the same is dismissed.

September 15, 2023
poonam

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>