

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

CR-5051-2022

Date of Decision :27.04.2023

Geeta

...Petitioner

Versus

Umed Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Deepak Girotra, Advocate for petitioner.

Mr. Rajesh Hooda, Advocate for the respondent.

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Harsimran Singh Sethi, J. (Oral)

Present petition has been filed challenging order dated 09.08.2022 passed by the Civil Judge (Junior Division), Rohtak by which, the application filed by the petitioner-defendant for setting aside the ex-parte order dated 01.02.2021 (Annexure P/3) has been dismissed.

Learned counsel for the petitioner-defendant argues that in the present case, respondent-plaintiff had filed suit for possession by way of specific performance keeping in view the agreement to sell dated 15.11.2017 between the parties. Learned counsel for the petitioner-defendant further argues that the petitioner-defendant was never served in the suit and the averment that the summons were received by the son of the petitioner-defendant namely, Sonu is incorrect and as soon as the petitioner-defendant came to know about the fact that her defence has been stuck off, she filed an application for setting aside the ex-parte order dated 01.02.2021, which application has been dismissed by the trial Court by the impugned order

dated 09.08.2022 on the ground that there was due service upon the petitioner-defendant, which fact is incorrect hence, an exparte order dated 01.02.2021 was based upon incorrect fact hence, is liable to be set aside.

Learned counsel for the petitioner-defendant further submits that as lis between the parties should be decided on merits by giving due opportunity to both the parties to present their case, one opportunity may kindly be granted to the petitioner-defendant to join proceedings, even if, the same is done by imposing cost.

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

The petitioner-defendant was proceeded exparte on the basis of a fact that service upon her was effected through her son. The said service in the suit is being denied by the petitioner-defendant. Be that as it may, nothing has come on record that the petitioner-defendant did not had the knowledge about the pendency of the suit so as to remain away from the said proceedings. The stage of the trial is such that another opportunity can be granted to the petitioner-defendant to join proceedings so that the lis between the parties is decided on merits.

As far as the delay which the respondent-plaintiff has suffered due to which, prejudice has been caused to the respondent-plaintiff, the same can be compensated with the grant of cost as it is the settled principle of law that all the efforts should be made to decide the lis between the parties on merits as far as possible.

Keeping in view the facts and circumstances of the present case, exparte order dated 01.02.2021 as well as impugned order dated 09.08.2022 rejecting the application for setting aside exparte order dated 01.02.2021 are

set aside and the petitioner-defendant is allowed to join the proceedings subject to payment of Rs.20,000/- as cost to be paid to the respondent-plaintiff so as to compensate him for the delay which has occurred due to the action/inaction on the part of the petitioner-defendant.

As the present suit was filed in the year 2021, the trial Court is requested to expedite the trial by adopting due procedure in accordance with law.

Present revision petition stands allowed in above terms.

April 27, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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