

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7033-2023

Date of Decision: 22.11.2023

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Manmohan Singh

.....Petitioner

Versus

Kanta Jain and Ors

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Harsh Chopra, Advocate for the petitioner.

GURBIR SINGH, J.

1. This petition is filed under Article 227 of the Constitution of India for setting aside the impugned order dated 20.10.2023 (Annexure P-12) passed by the learned Civil Judge (Junior Division) Ludhiana whereby application under Order 9 Rule 7 CPC filed by the petitioner/defendant No.2. for setting aside the ex-parte order dated 05.03.2019 (Annexure P-7) passed in Civil Suit bearing CS-3211-2018 was dismissed.

2. The brief facts as culled out are that the plaintiff/ respondent No.1, (hereinafter called 'the plaintiff') filed civil suit (Annexure P-1) for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff and from dispossessing her from the suit property. Along with suit, an application under Order 39 Rules 1 and 2 CPC was also filed.

3. Notice of suit alongwith stay application was given to the defendants and defendants were restrained from interfering into the possession of plaintiff over the suit property illegally, forcibly, during the pendency of suit, till further orders.

4. Defendant No.1 appeared in the Court on 10.07.2018 and the case was adjourned to 18.07.2018 for filing written statement on behalf of defendant No.1. Notice to defendants No. 2 and 3 was also issued. On the next date i.e. 18.07.2018, written statement was not filed and case was again adjourned to 06.08.2018. On 06.08.2018, defendants No. 2 and 3 appeared in person and case was again adjourned for filing of written statement by the defendants. On 07.02.2019, written statement on behalf of defendant No.1 was filed and case was adjourned for filing of written statement of remaining defendants. On the next day, defendants No. 2 and 3 were proceeded against ex-parte and case was adjourned for filing replicaition to written statement.

5. Petitioner/defendant No.2 moved an application for setting aside the ex-parte proceedings but the same has been dismissed.

6. Learned counsel for the petitioner/defendant No.2 contends that petitioner also filed a civil suit titled as ***Manmohan Singh Versus Sanjeev Jain*** regarding the same property for permanent injunction restraining from interfering in the peaceful possession over the property. Sh. Sanjeev Jain is son of the plaintiff-Kanta Jain. The said suit was withdrawn vide 09.07.2018 (Annexure P-9) by the petitioner/defendant No. 2 under the bonafide belief that compromise has been effected.

7. On 22.01.2023, an FIR has been registered under Sections 447, 511, 427, 506, 149 IPC at Police Station Modle Town, Ludhiana against the petitioner/defendant No.2 and five others at the instance of Rajiv Jain son of

late Sh. Rajinderpal Jain and plaintiff-Kanta Jain. When SHO called the petitioner/defendant No.2, he came to know about the pendency of the civil suit and about passing of ex-parte order dated 05.03.2019 (Annexure P-7) against him and immediately he moved an application for setting aside the ex-parte order. The petitioner/defendant No.2 was under the genuine and bonafide belief that compromise was effected between the parties and so he did not appear before the learned trial Court and plaintiff would withdraw the suit. Learned trial Court has wrongly dismissed the application for setting aside ex-parte order on the ground that it is time-barred.

8. Learned counsel for the petitioner/ defendant No.2 has further submitted that in case *M/s. Sant Security Services (Regd) through its Manager and Another Versus Gurdev Singh 2018(3) PLR 591:2019 AIR CC 34*, it has been laid down by this Court that there is no rule under Order 9 Rule 7 CPC that application for setting aside the ex-parte order has to be filed within a period of 30 days. He has also placed reliance on the judgment in *Vijay Kumar Madan and Others Versus R.N.Gupta Technical Education Society and Others: (2002) 5 SCC 30* passed by Hon'ble Supreme Court.

9. I have heard the submissions of the learned counsel for the petitioner/defendant No.2.

10. After institution of the suit, first order has been passed on 13.06.2018, whereby defendants were restrained from interfering into the possession of plaintiff over the suit property illegally and forcibly and notice was issued to the defendants. Petitioner/defendant No.2 appeared in the Court on 06.08.2018. The case was adjourned for filing of power of attorney as well as written statement and order of granting stay was extended. Thereafter,

neither power of attorney nor written statement was filed. On 15.01.2019, the following order has been passed:-

“Compromise not effected. Power of attorney on behalf of defendants no.2 and 3 and written statement not filed on behalf of defendants no.1 to 3. Now case is adjourned to 07.02.2019 for filing power of attorney on behalf of defendants no.2 and 3 and for filing written statement on behalf of defendants no.1 to 3.”

11. On 05.03.2019, power of attorney as well as written statement was not filed and petitioner/defendant No.2 was proceeded against ex-parte which means when compromise was not effected then petitioner decided not to contest the case and absented from the Court and was proceeded against ex-parte. The petitioner/defendant No.2 has filed the application on the wrong averments that he was under the impression that compromise was effected and the other party would withdraw the suit. The petitioner withdrew the suit on 09.07.2018. In the order dated 15.01.2019, it is clearly written that compromise was not effected between the parties.

12. A person who comes to the Court on wrong facts and try to mislead the Court, has no right to get relief. No doubt that the Courts are liberal for setting aside the ex-parte orders but a person is required to come to the Court on true facts and with clean hands.

13. Since the petitioner/defendant No.2 has not come to the Court with clean hands and has sought relief on wrong facts, so authorities referred by the petitioner are distinguishable on facts. After the lodging of FIR by the son of the plaintiff against the petitioner, he got up and filed the application for setting aside the ex-parte proceedings.

14. Relevant extract of case in ***Om Parkash Vs. Amarjit Singh and another 1988 (3) Judgments Today 72*** is as under:-

“Dealing with Order 9, Rule 7 of the code, he said that if a party is allowed to appear then, unless good cause is shown under Order 9, Rule 7 for the earlier non-appearance, the proceedings must continue from the stage at which the later appearance is entered, and the party so appearing cannot be relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings ie. he has no right to set back the hands of the clock. All that it means is that he must accept at that has gone before and be content to proceed from the stage at which he has come”

15. Thus the petitioner/defendant No.2 has right to join the proceedings from the stage he has filed the application but there is no ground to set aside the ex-parte proceedings. The petition is without merit and it is dismissed accordingly.

16. However, learned trial Court is directed to allow the petitioner/defendant No.2 to join the proceedings from the stage he has appeared by filing application but subject to payment of cost of Rs.5000/- to the respondent No.1/plaintiff.

(GURBIR SINGH)
JUDGE

22.11.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No