



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

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**CR-632-2024 (O&M)
Decided on: 22.05.2024**

NARINDER SINGH

...Petitioner

Versus

SANDEEP KUMAR GOYAL AND OTHERS

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Nitish Garg, Advocate for
Mr. Neeraj Madaan, Advocate
for the petitioner.

RITU TAGORE, J.

1. The revision is against the order dated order 06.11.2023 (Annexure P-6) passed by learned Civil Judge (Junior Division), Jalalabad (W) in a Civil Suit No.305 of 2018 titled “Sandeep Kumar and another Vs. Kulwinder Singh and others’ whereby application filed by the petitioner (defendant No.2 before the learned trial Court) to set aside the *ex parte* order dated 27.04.2022 (Annexure P-4) has been partly allowed to the extent permitting the petitioner to join the proceedings of the case, without giving the petitioner an opportunity to cross examine the witness of the respondents No.1 and 2 (plaintiffs before the learned trial Court) and present his own evidence. A prayer is made to modify the order dated 06.11.2023 by setting aside the order dated 27.04.2022. Further, a prayer is made to permit the petitioner to allow him to cross-examine the witnesses of the respondents No.1 and 2 (plaintiffs) and present his evidence.



2. Despite service in this petition, respondents No.1 and 2 did not put up appearance.

3. Learned counsel for the petitioner states that respondents No.1 and 2 instituted a suit for possession and for grant of *mesne* profit (Annexure P-1) against the petitioner and proforma respondents No.3 and 4. The petitioner appeared in the aforesaid case through his counsel and filed his written statement. However, when the case was fixed for evidence of the respondents No.1 & 2, the petitioner failed to appear in the Court and was proceeded *ex parte* on 27.04.2022 (Annexure P-4). It is further urged that petitioner moved an application (Annexure P-5) for setting aside *ex parte* order against him, which was partly allowed, as indicated above. The learned counsel submits that non-appearance of the petitioner, in the case was due to his counsel's advice to appear only when advised as explained by the petitioner in his application (Annexure P-5). Because of the aforesaid reason, the petitioner did not appear on the due date of hearing. The counsel submits that the absence of the petitioner was not intentional or wilful but due to the reasons detailed in the application (Annexure P-5).

4. Learned counsel further submits that although the learned trial Court permitted him to join the proceedings, but foreclosed his right to cross-examine the plaintiffs and their witnesses, and present his own evidence. The learned counsel states that aforesaid order is very harsh upon him. He has been prevented from controverting the case of the respondents No.1 and 2 (plaintiffs) and substantiating his own version by leading evidence, which has caused serious prejudice to his rights. Learned counsel further submits that he should be given one opportunity to conduct cross-examination on the plaintiff and his witnesses and one opportunity to lead



his evidence. It is further stated that petitioner does not want to cross-examine the witnesses of the defendants, already examined. Learned counsel, on behalf of the petitioner, further undertakes that he shall not take any adjournment.

5. Although, I find that there has been inaction on the part of petitioner in not prosecuting the litigation with due diligence, but still it cannot be suggested that delay has been caused by the petitioner for any *mala fide* reasons. It is a well established norm that the Court should adopt a liberal approach, and rights of the parties should be adjudicated on the merits of the controversy rather than being thwarted by rigid technicalities. Moreover, when the learned trial Court allowed the petitioner to join the proceedings, it should have permitted the petitioner to cross-examine the plaintiff (PW-1) and his witnesses, if any, and allow him to lead his own evidence. Additionally, the counsel on behalf of the petitioner undertakes to conclude the evidence in two opportunities as mentioned above. Furthermore, the delay can always be atoned by imposing costs.

6. In such circumstances, to do complete justice between the parties, I believe that two opportunities should be granted to the petitioner to conclude the evidence. Accordingly, impugned order dated 27.04.2022 (Annexure P-4) is set aside and order dated 06.11.2023 (Annexure P-6) is modified to the extent of permitting the petitioner to cross-examine the plaintiff and his other witness(es), if any, and further permit the petitioner to lead his evidence, subject to the petitioner (revisionist) paying Rs.15,000/- as costs to respondents No.1 and 2 (plaintiffs).

7. Petitioner is directed to appear before learned trial Court on the due date of hearing as fixed by the learned trial Court and shall provide the



petitioner two effective opportunities; one for conducting the cross-examination on the plaintiff and his witness(es) if any, and one for presenting his own evidence (evidence on behalf of the petitioner Narinder Singh), taking into account the convenience of the opposing party and the Court’s own workload.

8. It is made clear that in case of default, this order shall stand automatically vacated.
9. Accordingly, this revision- petition is allowed, in above terms.
10. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

22.05.2024
Rimpal

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