

126.

2024:PHHC:048305

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

Civil Revision No.1977 of 2024

Date of decision: 09.04.2024

Angrej Singh

.... Petitioner

Versus

M/s Arjun Singh Bhim Singh, Commission Agents, Booth No.19, New
Grain Market, Ladwa, District Kurukshetra

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Kulwant Singh Dhanora, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 05.10.2023 (Annexure P-5) passed by learned Nyayadhikari, Gram Nyayalaya, Ladwa, District Kurukshetra, vide which, the application filed by the petitioner-defendant for setting aside the order dated 11.05.2023 has been dismissed.

2. Briefly stated, the respondent-plaintiff filed a suit for recovery of Rs.15,63,191/- along with future interest @ 2% per month from the date of filing of the suit till realization on the ground that respondent-plaintiff is a registered partnership firm dealing in commission agency in Grain Market, Ladwa, District Kurukshetra. The petitioner-defendant was a customer with plaintiff-firm.

2.1 The petitioner-defendant was regularly appearing before the Court, but on 11.05.2023, he could not appear and the following order was passed:-

“Previous cost not paid. Written statement and reply to the application under Order 38 Rule 5 read with Order 39 Rule 1 and 2 CPC, on behalf of the defendant not filed. Case called several times since morning but none has appeared. It is already 03.30 P.M. No more wait is justified. Therefore, defendant is hereby proceeded against exparte.

Now to come up on 24.08.2023 for exparte evidence of plaintiff.”

Thereafter, the petitioner-defendant filed an application for setting aside said order, but it was dismissed vide 05.10.2023 which has been challenged by way of present revision petition.

3. Learned counsel for the petitioner submits that the absence of petitioner-defendant was not intentional rather it was due to bona fide reason as he had to go to the Court at Ambala. In the morning, he had also informed the court, but somehow, ex-parte order was passed. It is further submitted that if ex-parte order is not set aside, in that eventuality, he shall suffer loss and injury. Learned counsel has prayed that the petitioner-defendant may be allowed one opportunity to join the proceedings in suit and to file written statement.

3.1 The matter before the trial Court is stated to be fixed for hearing on 18.04.2024.

4. I have heard learned counsel for the petitioner and have gone through the file.

5. A perusal of impugned order would show that though there is some inaction on the part of the petitioner as despite availing numerous opportunities, he could not file the 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, 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 as respondent would be compensated with cost, so the impugned order deserves to be set aside.

6. Notice of this petition is not being issued to the respondent, as it may linger on the case and may cause financial burden on respondent.

7. In view of above, the orders dated 05.10.2023 and 11.05.2023 are hereby set aside and one opportunity is granted to the petitioner-defendant to file written statement, however, that would be subject to payment of costs of Rs.15,000/-, out of which, Rs.10,000/- shall be paid to the respondent-plaintiff and Rs.5,000/- shall be deposited with the concerned District Legal Services Authority. The petitioner-defendant shall also file the written statement on 18.04.2024, the date fixed before the trial Court and no further opportunity shall be given to him for this purpose. In case due to some reason, written statement could not be filed on

18.04.2024, then same shall be filed on next working day. In case of default, this order shall automatically stand vacated.

8. Present revision petition stands disposed of accordingly.
9. If the respondent is not satisfied with this order, he may move an application within 30 days to recall the same.

(GURBIR SINGH)
JUDGE

April 09, 2024
sanjeev

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