

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

137

CR-2147-2024 (O&M)

Decided on: 22.07.2024

SEEMA

...Petitioner

Versus

JITPREET SINGH GILL AND ANOTHER

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Shubham Goyal, Advocate  
for the petitioner.  
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RITU TAGORE, J.

CM-9515-CII-2024

Application is allowed as prayed for.

CM-9516-CII-2024

This application is for placing on record Annexure P-6.

Application is allowed as prayed for.

Annexure P-6 annexed with the application is taken on record.

CR-2147-2024 (O&M)

1. This revision is directed against the order dated 04.03.2024 (Annexure P-5) passed by learned Civil Judge, Junior Division, Jalandhar; whereby an application (Annexure P-3) filed by the petitioner (defendant No.1 before the learned trial Court) for setting aside *ex parte* order dated



08.05.2022 against her, has been dismissed in Civil Suit bearing No.5780/2018 titled as 'Jitpreet Singh Gill Vs. Seema and another'.

2. Learned counsel submits that a suit for recovery has been instituted by respondent No.1 (plaintiff) against the petitioner and respondent No.2 (defendant No.2 before the learned trial Court), alleging defamation, mental agony and other claims as detailed in the plaint (Annexure P-1). The petitioner, represented by her counsel, continued to participate in the proceedings and followed her counsel's instructions to appear as necessary. Learned counsel further submits that the Covid-19 pandemic caused disruption to the Court functioning and petitioner went to her native place in Uttar Pradesh. Further, due to a family mishap, she was unable to return to Punjab, immediately.

3. Learned counsel submits that upon the petitioner's return to Punjab, she contacted her former counsel regarding the proceedings of the case. However, the learned counsel did not provide a satisfactory response. Consequently, the petitioner engaged another counsel and came to know that an *ex parte* order dated 18.05.2022 (Annexure P-2) had been issued against her.

3. Learned counsel submits that the petitioner on 12.01.2024 moved an application (Annexure P-3) for setting aside the *ex parte* order. Learned counsel contends that learned Court failed to issue any fresh notice to the petitioner following the statement made by her previous counsel on 02.12.2021 stating that he was no longer willing to represent the petitioner. Learned counsel submits that learned trial Court dismissed the application in an arbitrary manner, without considering the detailed facts and reasons



the petitioner's valuable right to defend the case has been unjustly foreclosed by the learned trial Court, causing serious prejudice to her rights in the suit. The learned counsel prays that the order be set aside, and the petitioner be granted an opportunity to join and pursue her case.

4. It is a matter of record that respondent No.1, instituted a civil suit seeking recovery of compensation and damages against the petitioner and respondent No.2 on account of malicious prosecution. It is explicit from the *zimini* orders that the petitioner was represented by counsel who appeared on her behalf on several hearing dates. However, on 02.12.2021, counsel for the petitioner suffered a statement indicating that he had no contact with the petitioner and that she had not communicated with him for long period and opted to withdraw representing her. Thereafter the case was adjourned to various dates due to restricted working of the Court caused by the outbreak of Covid-19 pandemic and for the appearance of the petitioner in Court. The *zimini* order reflect that no notice issued to the petitioner by the learned trial Court. Simultaneously, the petitioner made no effort to appear in the Court on her own. In her application to set aside *ex parte* order (Annexure P-3), the petitioner failed to specify dates of her returned to Punjab from her native place (UP) and did not specify when she contacted her former counsel or when she became aware of the *ex parte* order passed against her. It is settled position of law that a party must remain vigilant in prosecuting or defending her case.

5. Although, I find that the petitioner has been somewhat negligent in defending the litigation with due diligence but still, it cannot be suggested that the delay has been caused by the petitioner for any



a liberal approach and rights of the parties should be adjudicated on the merits of the controversy, rather, thwarting the same on rigid technicalities. Keeping that in view, it is also an established practice of law that the delay can always be atoned by imposing costs.

6. As such, in circumstances to do complete justice between the parties and the delay which has occasioned because of the absence of the petitioner, I believe that an effective opportunity be granted to the petitioner to join the proceedings and enable her to put forth her stand before the learned Court to the assertions and allegations raised by the respondent No.1 (plaintiff) against her. Accordingly, impugned order dated 04.03.2024 (Annexure P-5) is set aside, subject to payment of Rs.10,000/- as costs payable by the petitioner to respondent No.1 (plaintiff).

7. Petitioner is directed to put her appearance before learned trial Court on the due date of hearing as fixed by the learned trial Court and join the proceedings and make payment of costs. The trial Court shall proceed with the case as per the law.

8. It is made clear that in case of default, this order shall automatically stand vacated.

9. Respondent No.1 if not satisfied with this order, may move an application for recalling of this order within 30 days.

10. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)  
JUDGE

22.07.2024  
Rimpal

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