

CR-4168-2024

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2024.PHHC:095548



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

CR-4168-2024

Date of decision : 29.07.2024

SHAMSHER SINGH ALIAS SUMER SINGH

....Petitioner

Versus

SAROJ AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ravi K. Girdhwal, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Challenge in the instant revision is to the order dated 26th of May, 2022 passed by Additional Civil Judge (Sr. Division) Jhajjar whereby the application filed by the petitioner seeking setting aside *ex parte* order dated 8th of April, 2022 has been dismissed.

2. Respondents filed suit for possession by way of partition in which the petitioner was arraigned as defendant No.2. Despite service, the petitioner failed to appear and was ordered to be proceeded *ex parte* vide order dated 8th of April, 2022. Vide same order, the parties were directed not to change the nature of the suit land till the next date of hearing and the matter was adjourned to 12th of September, 2022. In the interregnum, the petitioner appeared and filed application seeking preponing of the suit, application seeking setting aside of the *ex parte* order dated 8th of April, 2022. The application filed by the petitioner seeking preponing of the suit



stands dismissed vide order dated 26th of May, 2022. However, counsel for the petitioner while referring to para No.5 of the impugned order submits that even his application seeking setting aside of *ex parte* order also has been declined. He further refers to order dated 27th of July, 2023 to submit that even subsequent application filed by the petitioner stands declined merely on the ground that earlier application stands dismissed vide order dated 26th of May, 2022.

3. In the considered opinion of this Court, the petitioner ought to have challenged order dated 27th of July, 2023 as well. However, the fact remains that after the petitioner was proceeded *ex parte* on 8th of April, 2022 and the matter was adjourned to 12th of September, 2022, the petitioner appeared and filed application seeking setting aside of the *ex parte* order and allowing him to join the proceedings. Thus, there was no reason for the Trial Court to disallow the application filed by the petitioner and he ought to have been allowed to join the same that too when the matter was fixed for service of remaining defendants.

4. In view of above, without further commenting on the merits of the impugned order, keeping in view that the evidence of the plaintiff is yet to commence, this Court finds that it will be in the fitness of things that the petitioner/defendant No.2 is allowed to join the proceedings. Accordingly, he is directed to appear before the Trial Court on **1st of August, 2024**. On that day, the petitioner shall produce the certified copy of the instant order before the Trial Court.

2024.PHHC.095548



- 5. Counsel for the petitioner further submits that the petitioner undertakes to file written statement within 30 days thereafter.
- 6. In view of above, with the aforesaid modification in the impugned order, the present revision petition is disposed off.
- 7. Keeping in view the nature of relief granted to the petitioner, this Court does not deem it fit to issue notice to the plaintiff/respondent. In case, the plaintiff/respondent feels aggrieved of the same, she shall be at liberty to move appropriate application.
- 8. Ordered accordingly.

July 29, 2024			(Pankaj Jain)
Dpr			Judge
	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No