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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-2744-2021(O&M)
Date of decision : 04.09.2024

Malti ... Appellant

Versus

Maya Devi and others ... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Amit Jaiswal, Advocate
for the appellant.

Mr.Ishwinder Singh, Advocate for
Mr.Shantanu Bansal, Advocate
for respondent no.1.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 25.08.2021 passed by the Civil Judge (Junior Division), Ambala Cantt (Annexure P-4) whereby the application moved by the petitioner-defendant no.1 for setting aside the ex-parte proceedings initiated against the petitioner-defendant no.1 vide order dated 09.08.2019 has been dismissed.
2. Learned counsel for the petitioner has submitted that in the present case, the petitioner-defendant no.1 had filed an application for the supply of documents and affidavits of Maya Devi and Jag Parshad and other documents on 07.12.2018 in which notice was issued and the case was adjourned to 04.01.2019 for filing reply. It is submitted that on the next six dates, no reply was filed by the respondent no.1-plaintiff and thus, it is she



who delayed the proceedings. It is further submitted that on 22.07.2019 the order on the application filed by the petitioner-defendant no.1 was passed and the matter was adjourned to 09.08.2019 and on 09.08.2019, the petitioner-defendant no.1 was proceeded against ex-parte. It is stated that on 25.09.2019 the petitioner-defendant no.1 had filed an application for setting aside the ex-parte proceedings and in the said application, it was specifically stated that on 22.07.2019 the petitioner-defendant no.1 was present and was told to come after lunch in a routine manner and thereafter the date was noted as 09.08.2019 and even on 09.08.2019 the date was noted as 22.08.2019 and thereafter as 18.09.2019 and the petitioner-defendant no.1 was under the impression that the reply is to be filed to the application filed by the petitioner-defendant no.1. It is further stated that it is only on 18.09.2019 the petitioner-defendant no.1 learned that, in fact, the application filed by the petitioner-defendant no.1 has already been disposed of on 22.07.2019 and the petitioner-defendant no.1 was proceeded against ex-parte on 09.08.2019. It is submitted that even a perusal of the order dated 22.07.2019 would show that no reply was filed by respondent no.1-plaintiff to the application filed by the petitioner-defendant no.1 and thus, the petitioner-defendant no.1 and her counsel were under a bonafide belief that the reply was to be filed and the case would be adjourned in routine even on 19.08.2019. It is further submitted that the case is at an initial stage inasmuch as the same is still for the evidence of the plaintiff and the petitioner-defendant no.1 undertakes not to delay the proceedings. It is prayed that the impugned order vide which the petitioner-defendant no.1

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has been proceeded against ex-parte be set aside and the petitioner-defendant no.1 be permitted to join the proceedings. It is stated that on 23.11.2021, a Coordinate Bench of this Court had granted an interim order in favour of the petitioner-defendant no.1 which is continuing till date.

3. Learned counsel for respondent no.1, on the other hand, has submitted that the petitioner-defendant no.1 is purposely delaying the proceedings and was earlier also proceeded against ex-parte on 15.05.2018 and the said order was set aside by the Court on 10.09.2018 subject to payment of costs of Rs.500/- and the case was adjourned for plaintiff evidence and the petitioner-defendant no.1 had moved an application for supply of the copy of the affidavits on the said date. It is submitted that the case was adjourned to 09.08.2019 in the presence of the counsel for the petitioner -defendant no.1 and on 09.08.2019, two witnesses, i.e. plaintiff Maya Devi and Jag Parshad were present but their cross-examination could not be conducted as defendant no.1 did not appear and the said witnesses kept waiting till 2.15 pm. It is further submitted that on the next two dates also, defendant no.1 did not appear and it is only on 25.09.2019 the application for setting aside ex-parte proceedings was moved. It is stated that in the said circumstances, the prayer made by the petitioner-defendant no.1 deserves to be rejected and in case any opportunity is granted then heavy costs deserve to be imposed upon the petitioner-defendant no.1.

4. This Court has heard the learned counsel for the parties and has perused the paper book.

5. The petitioner has tried to justify the delay in the proceedings

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by making reference to the zimni orders dated 07.12.2018 upto 01.07.2019 to highlight that in spite of six dates, no reply was filed by the plaintiff-respondent no.1 to the application filed by the petitioner on 07.12.2018 for supply of documents including affidavit of the plaintiff and Jag Parshad and certain other documents. All the said zimni orders, which have been produced by both the counsels, are taken on record. It is further the case of the petitioner-defendant no.1 that although the petitioner-defendant no.1 was aware of the dates i.e. 09.08.2019 as well as 22.08.2019 and 18.09.2019 but the petitioner-defendant no.1 was under the impression that since reply to the said application filed by the petitioner-defendant no.1, has not been filed and thus, the case was being simply adjourned for filing the reply / supply of documents and it is only on 18.09.2019 she learned that she was proceeded against ex-parte on 09.08.2019, although the said plea taken does not inspire full confidence but it is not in dispute that the case is pending for the evidence of the plaintiff and that the proceedings have been stayed by a Coordinate Bench of this Court vide order dated 23.11.2021 which is continuing till date. The suit filed in the present case by respondent no.1-plaintiff is for permanent injunction restraining the defendants from making any construction in front of her house and to remove alleged encroachment and thus, in case the petitioner-defendant no.1 is proceeded against ex-parte, there is a possibility that she would suffer serious prejudice.

6. Keeping in view the above said facts and circumstances, this Court is of the opinion that the impugned order dated 25.08.2021 (Annexure P-4) deserves to be set aside and the ex-parte order dated 09.08.2019 also



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deserves to be set aside but however, the same would subject to the petitioner depositing costs of Rs.15,000/- before the trial Court within a period of three weeks from today. This is because, apart from the fact that non-appearance of the counsel and of the petitioner has resulted in undue delay in proceedings, on 09.08.2019 even two witnesses had come and waited till 2:15 pm and could not be cross-examined on account of non appearance of the petitioner and his counsel and also keeping in view the fact that even on an earlier occasion, the petitioner was proceeded against ex-parte.

7. Accordingly, the present revision petition is partly allowed and the impugned order dated 25.08.2021 is set aside and the ex-parte order dated 09.08.2019 is also set aside but the same would be subject to the petitioner depositing Rs.15,000/- as costs in the trial Court within a period of three weeks from today and the said costs would be released by the trial Court in favour of respondent no.1-plaintiff Maya Devi. As has been undertaken on behalf of the petitioner, the petitioner would not cause any further delay in the proceedings and would diligently follow the case.
8. Pending application, if any, stands disposed of in view of the above said order.

(VIKAS BAHL)
JUDGE

September 04, 2024.
Davinder Kumar

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