



131

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

CR-7110-2024

Date of decision: 09.12.2024

Atanu Dass

...Petitioner

Versus

M/s Spaze Tower Private Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.S. Mamli, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 08.11.2024 (Annexure P-5) whereby an ex-parte order dated 27.08.2024 has been set aside.
2. Learned counsel for the petitioner has submitted that in the present case, a perusal of the reply (Annexure P-4) would show that the respondent had gained the knowledge of the said proceedings on 05.09.2024, as the petitioner had moved an application before the police to stop the construction being raised by the respondent by showing that the interim injunction order was granted in favour of the petitioner. It is thus submitted that the respondent had the knowledge on 05.09.2024 and not on 21.09.2024 as is stated in para 2 of the application (Annexure P-3) filed by the respondent for setting aside the ex-parte order. It is further submitted



that although the petitioner had not raised the plea with respect to the moratorium but the said point was argued and the said aspect has not been finally decided.

3. This Court has heard learned counsel for the petitioner and perused the paper book and finds that the impugned order is in accordance with law and has been rightly passed and the present revision petition deserves to be dismissed.

4. It is not in dispute that the petitioner had filed a suit for permanent injunction and mandatory injunction and the plaint in the case is dated 10.08.2024. On 27.08.2024, the defendant/respondent was proceeded against ex-parte and an ad interim injunction was granted in favour of the petitioner restraining the defendant from constructing the wall as described by the plaintiff in the site plan. On 25.09.2024, an application for setting aside the order dated 27.08.2024 i.e., within a period of one month, was filed by the respondent-defendant on the plea that the respondent-defendant did not receive any summon from the Court and they only came to know about the case on 21.09.2024. The said application was opposed by the petitioner by filing reply (Annexure P-4).

5. The trial Court, vide order dated 08.11.2024, had allowed the said application and observed that the respondent-defendant had approached the Court expeditiously on 25.09.2024 for setting aside the ex-parte order dated 27.08.2024 and thus, they should be granted opportunity of being heard. It was also observed that an injunction has already been granted in favour of the plaintiff and it is a settled principle that a matter must be adjudicated on merits. With respect to the argument raised by the learned



counsel for the petitioner on the aspect of moratorium having been declared by the National Company Law Tribunal (NCLT), the trial Court had specifically observed that the said contention would be appropriately addressed subsequent to the determination of the application for setting aside the ex parte order. Thus, the said argument has been kept open by the trial Court and the same has been rightly done as admittedly no such plea was taken in the reply (Annexure P-4) filed by the petitioner to the application filed by the respondent-defendant for setting aside the ex-parte order dated 27.08.2024.

6. Argument raised by learned counsel for the petitioner to the effect that the respondent had gained knowledge on 05.09.2024 and not on 21.09.2024 would also not further the case of the petitioner inasmuch as the present application for setting aside the ex-parte order had been filed on 25.09.2024 i.e., within a period of one month even from the said date i.e., 05.09.2024 and thus, is within limitation.

7. Keeping in view the abovesaid facts and circumstances, the impugned order dated 08.11.2024 has been rightly passed and deserves to be upheld and the present revision petition deserves to be dismissed and is accordingly, dismissed.

09.12.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No