



CR-2768-2025

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

(125)

CR-2768-2025

Date of decision: - 07.05.2025

Sushil Kumar

....Petitioner

Versus

Hardev Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Komal Preet Kaur, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 17.03.2025 (Annexure P-8) passed by the Civil Judge (Junior Division), Amritsar vide which the application for setting aside the ex-parte proceedings initiated against the petitioner in counter claim, has been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner was proceeded against ex-parte in the counter-claim on 08.02.2024 and he could not appear on 08.02.2024 as he was unwell and for the said purpose has referred to the patient discharge summary of the petitioner from Atlantis Hospital to show that the petitioner was admitted at the said hospital on 26.02.2023 and was discharged on 01.03.2023. It is

further submitted that in the present case, an oral settlement had been arrived at between the parties and it is for the said reason that the petitioner had stopped appearing in the Court. It is stated that the oral compromise between the parties was to the effect that the respondents/counter-claimants would accept the claim of the petitioner. It is further submitted that the application filed by the petitioner for setting aside the ex-parte proceedings is meritorious and the impugned order dated 17.03.2025 (Annexure P-8) vide which the said application has been dismissed is against law and deserves to be set aside.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book and finds that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

4. It is not in dispute that the present petitioner had filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the suit property of the plaintiff. The respondents had filed a counter-claim (Annexure P-3) praying for a decree of possession with respect to the property in question. On 15.09.2021, an application under Order 39 Rules 1 and 2 CPC was disposed of by the trial Court by ordering both the parties to maintain status quo regarding alienation qua the property in dispute. On 08.02.2024, no one had appeared on behalf of the plaintiff/petitioner and accordingly the suit filed by the petitioner/plaintiff was dismissed in default and the

petitioner/plaintiff was proceeded against ex-parte in the counter-claim and the case was adjourned to 18.03.2024 for ex-parte evidence of the counter-claimants. The zimni orders from 18.03.2024 up to the passing of the impugned order dated 17.03.2025 have not been annexed with the present revision petition but the learned counsel for the petitioner has fairly submitted that as is apparent from the impugned order, the counter-claimants had already advanced the final arguments and the case was fixed for final order.

5. The petitioner had moved an application for setting aside the ex-parte proceedings on the pleas which have been sought to be raised before this Court. The trial Court vide the impugned order dated 17.03.2025 (Annexure P-8) dismissed the said application after observing that the application had been filed when the final arguments had already been advanced by the counter-claimants and the case was fixed for final order and had further observed that since the present petitioner/plaintiff was fully aware of the proceedings, thus, it is apparent that he was watching the proceedings and had moved an application at the fag end. The plea with respect to the oral compromise having been arrived at between the parties, was rejected by observing that in case such a compromise had been arrived at, then, the petitioner should have withdrawn the suit on the basis of the compromise and should not have got the suit dismissed in default and got himself proceeded against ex-parte in the counter-claim. It is further observed that the petitioner has till date not filed any application for restoration of his civil suit.

6. With respect to the plea that the petitioner had suffered a medical problem, it was observed that no medical record had been placed on record. Even a perusal of the medical record, now sought to be highlighted by the learned counsel for the petitioner would show that the same is with respect to a private hospital and as per the discharge summary the petitioner was discharged on 01.03.2023, whereas, the petitioner was proceeded against ex-parte much thereafter i.e. on 08.02.2024.

7. In the present case, it could not be disputed that the petitioner was aware of the proceedings and in fact he himself had filed the civil suit. Apparently, only to delay the proceedings in the counter-claim which was filed for possession, the petitioner and his counsel had stopped appearing and when the matter was fixed for final order, the application was filed for setting aside the ex-parte proceedings only to delay the proceedings in the counter-claim for possession. There is no material on record to show that any oral compromise had been arrived at and there is nothing to show as at what benefit was given to the respondents/defendants in view of the said compromise. The said plea has been taken only as an afterthought. On 08.02.2024, even the counsel for the plaintiff/petitioner had not appeared. The impugned order has been rightly passed and deserves to be upheld.

8. The Hon'ble Supreme Court in the case of "*Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*", reported as (2010) 8 *Supreme Court Cases* 329, had observed that the High Courts cannot, at

the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

9. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

May 07, 2025

naresh.k

**(VIKAS BAHL)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	Yes