

CNR No. PBTTA0-000563-2019

GW/16/2019

Kirpal Singh Vs. Harpreet Kaur.

Present: Sh. V.K.Sharma, Advocate counsel for the petitioner.
Sh. S.K.Mehta, Advocate counsel for applicant/respondent.

Heard on application under order 9 Rule 7 of C.P.C. for setting aside ex-parte order/proceedings initiated against the applicant/respondent. Learned counsel for applicant/respondent has argued that no summons were served upon applicant/respondent and said respondent has been wrongly proceeded against ex-parte. Learned counsel for applicant/respondent contended that the absence of the applicant was neither intentional nor deliberate rather was due to reasons aforementioned. He also argued that an irreparable loss shall be suffered by the applicant, if the application in hand is not allowed.

On the other hand, learned counsel for the petitioner has opposed the present application only on the ground that same is not maintainable in the present form and present application is malafide one and has been filed with malafide intention with ulterior motive just to delay the decision of the case. Learned counsel for the petitioner further submitted that applicant/respondent was in knowledge of the case and was rightly proceeded against ex-parte in the present case and as such, the applicant has not approached the court with clean hands and true facts.

I have considered the contradictory version of the contesting parties and have deliberated over the arguments advanced in the light of pleadings, documents and peculiar facts and circumstances.

Through present application, applicant/respondent has sought setting-aside of ex-parte order dated 31.10.2019 against her, whereby, she was proceeded against ex-parte. Present application has been opposed by

the petitioner on the ground of maintainability and further contended that application is malafide one and has been filed with malafide intention with ulterior motive just to to delay the decision of the case. This Court is not in agreement with the contention so raised by learned counsel for the petitioner. The applicant/respondent has moved present application immediately after coming into knowledge of said proceedings. There is no limitation in moving such application prescribed by law. Period of 30 days under Article 123 of Limitation Act applies only to ex-parte decree and not to ex-parte proceedings. However, present application has been moved within period of 30n days from passing of order dated 31.10.2019. Under Order 9 Rule 7 CPC, the applicant was required to show only good cause for her failure to appear in the Court on the date fixed. In the present case the applicant has pleaded that she came to know about the ex-parte proceedings on the date of filing the application. The application in hand is duly supported with affidavit of Harpreet Kaur respondent. Without commenting anything on the merits, present application deserves to be allowed as an irreparable loss shall be suffered by the applicant in case the relief sought by the applicant is not granted. Case is at its initial stage. The costs are considered to be panacea of all evils in such circumstances.

Accordingly, application in hand is **allowed**, subject to cost of Rs.1,000/- to respondent to be paid to petitioner. Now to come up on 31.03.2021, for filing written reply to the main petition by the respondent and for payment of costs.

Dated:-23.02.2021
(*Arun Steno-I*)

Munish Garg
ACJ(SD), Patti
(UID No. PB0310)