



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

CR-2526-2021 (O&M)

Date of Decision : 21.07.2025

Sucha Singh ... Petitioner(s)

Versus

Varinder Kaur ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. APS Sandhu, Advocate for the petitioner.

Mr. B.D. Sharma, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition has been preferred by the defendant-petitioner challenging the order dated 11.02.2019 (Annexure P-10) whereby the defendant-petitioner was proceeded against *ex parte* in an application filed by the plaintiff-respondent under Order 39 Rule 2A of the Code of Civil Procedure, 1908 as also the order dated 01.10.2021 (Annexure P-13) vide which the application for setting aside the *ex parte* order dated 11.02.2019 was dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein, who is admittedly a tenant, filed a suit for permanent injunction against the defendant-petitioner. In the said suit, on 19.11.2018, status quo was directed by the Trial Court to be maintained. Thereafter, an application was filed under Order 7 Rule 14 CPC by the defendant-petitioner herein and the matter was adjourned for the reply. As per the learned counsel for the defendant-petitioner, reply was not handed over to the defendant-petitioner's counsel and vide the order dated 06.03.2019 the application was

disposed off. Subsequently, an application was filed under Order 39 Rule 2A CPC in which the defendant-petitioner was proceeded against *ex parte* vide order dated 11.02.2019. An application filed by the defendant-petitioner for setting aside the *ex parte* order dated 11.02.2019 was also dismissed vide order dated 01.10.2021. Aggrieved by the same, the present revision petition has been filed.

3. Learned counsel for the defendant-petitioner would contend that the Trial Court while dismissing the application for setting aside the *ex parte* order has held that the defendant-petitioner had notice of the application filed under Order 39 Rule 2A CPC inasmuch as in the reply to the application under Order 7 Rule 14 CPC it was specifically stated that an application under Order 39 Rule 2A CPC had been filed. Learned counsel would further contend that in any case during the interregnum the order dated 19.11.2018 has merged in the final order dated 19.04.2025 whereby the application under Order 39 Rules 1 and 2 CPC filed by the plaintiff-respondent herein has itself been dismissed.

4. *Per contra* the learned counsel for the plaintiff-respondent would contend that the defendant-petitioner was rightly proceeded against *ex parte* as he had full knowledge of the filing of the application under Order 39 Rule 2A CPC, however, he failed to appear. It is further the contention that an appeal has been preferred against the order dated 19.04.2025 dismissing the application under Order 39 Rules 1 and 2 CPC.

5. I have heard the leaned counsel for the parties.

6. In the present case the defendant-petitioner was proceeded against *ex parte* for not putting in appearance. The case of the learned

counsel for the defendant-petitioner is that he was never served. In the absence of any reference to the service report, it is difficult to ascertain as to whether the defendant-petitioner was ever served in the present case except for the fact that it has been stated that as per the report of Ahlmad, notice was served which fact is vehemently denied by the learned counsel for the defendant-petitioner. There would be no reason for the defendant-petitioner not to appear in the said proceedings when he had been contesting the suit filed by the plaintiff-respondent. Dehors whether the defendant-petitioner was validly served or not, this Court deems it appropriate, in order to do complete justice between the parties, to set aside the orders dated 01.10.2021 and 11.02.2019. The application under Order 39 Rule 1 and 2 CPC already stands dismissed and it would be a travesty of justice if the defendant-petitioner is not permitted to participate in the proceedings filed under Order 39 Rule 2A CPC. The present revision petition stands allowed accordingly. Pending applications, if any, also stand disposed off.

7. Any observations made herein shall not be treated as an expression of opinion on the merits of the case.

21.07.2025
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO