



CR-1119-2025

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

126

CR-1119-2025

Date of decision:04.03.2025

ASHWANI MAHAJAN

...PETITIONER

VS.

MADAN LAL CHOPRA AND ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Parambir Singh, Advocate  
for the petitioner.

\*\*\*\*

**SUVIR SEHGAL, J.**

1. Instant petition has been filed by the petitioner/first defendant for modification of order dated 24.12.2024, Annexure P-4, whereby he has not been granted permission to file written statement.

2. Counsel for the petitioner/ first defendant states that the respondent No.1/landlord filed a petition, Annexure P-1, for eviction of the defendants from a shop on the ground of arrears of rent as also on account of personal necessity. Counsel asserts that the petitioner never served and was proceeded against *ex parte* on 20.02.2024 and in November, 2024, when he became aware of *ex parte* proceedings, an application, Annexure P-2, was filed, which has been accepted vide order dated 24.12.2024, Annexure P-4.



CR-1119-2025

-2-

Counsel submits that although *ex parte* proceedings have been set aside and petitioner has been allowed to join the proceedings, but permission to file the written statement has not been granted. Placing reliance upon the judgment of the Supreme Court in *Vijay Kumar Madan and others Vs. R.N. Gupta Technical Education Society and others (2002) 5 SCC 30*, counsel urges that the Rent Controller has failed to appreciate the scope of Order 9 Rule 7, CPC.

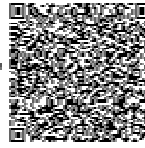
3. I have heard counsel for the petitioner and considered his submission besides examining the documents placed on the record.

4. As the legal position has been settled by the Supreme Court in *Vijay Kumar Madan's* case (supra), which will be clear from the following paragraphs, this Court does not deem it necessary to call upon respondent No.1/landlord as it will lead to delay in the proceedings.

5. In *Vijay Kumar Madan's* case (supra), Supreme Court has observed as under:-

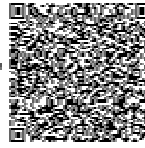
*“6. Having heard the learned counsel for the parties, we are of the opinion that the impugned order of the High Court deserves to be maintained but subject to certain modifications. Under Order 9 Rule 7 CPC the Court does have jurisdiction, while setting aside the ex-parte order to impose costs and also to put the defendants-applicants on terms. Rule 7 of Order 9 of the CPC reads as under:*

*“7. Procedure where defendant appear on day of adjourned hearing and assigns good cause for previous non-appearance - Where the court has*



*adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance."*

7. *Power in the Court to impose costs and to put the defendant-applicant on terms is spelled out from the expression "upon such terms as the court directs as to costs or otherwise". It is settled with the decision of this Court in Arjun Singh v. Mohinder Kumar (AIR 1964 SC 993) that on an adjourned hearing, in spite of the Court having proceeded ex-parte earlier the defendant is entitled to appear and participate in the subsequent proceedings as of right. An application under Rule 7 is required to be made only if the defendant wishes the proceedings to be reflected back and reopen the proceedings from the date wherefrom they became ex parte so as to convert the ex parte hearings into bi-parte. While exercising power of putting the defendant on terms under Rule 7 the Court cannot pass an order which would have the effect of placing the defendant in a situation more worse off than what he would have been if he had not applied under Rule 7. So also the conditions for taking benefit of the order should not be such as would have the effect of decreeing the suit itself. Similarly, the court may not in the garb of exercising power of placing upon terms make an order which probably the Court may not have made in the suit itself. As pointed out in the case of Arjun Singh the purpose of Rule 7 in its essence is to ensure the orderly conduct of*



*the proceedings by penalizing improper dilatoriness calculated merely to prolong the litigation.”*

6. It has been held by the Supreme Court that the purpose of an application under Order 9 Rule 7 CPC is to relegate the party back and re-open the proceedings from the date when he became *ex parte*. In other words, the defaulting party has to be put in the same position as he/she was prior to the date of passing of the *ex parte* order. In doing so, Court may impose such condition or cost as it deems appropriate keeping in view the facts and circumstances of each case.

7. It is evident from a perusal of order dated 24.12.2024, Annexure P-4, that both the defendants were proceeded against *ex parte* and on an application filed, *ex parte* proceedings against the second defendant, who is the brother of the first defendant, were set aside and he was granted permission to file the written statement. However, when the first defendant filed the application, Annexure P-2, Court set aside the *ex parte* order, but did not grant permission to file the written statement though the permission was granted to join the proceedings from ongoing stage. By merely observing that no good cause has been shown, the petitioner cannot be denied the permission to file his response. In the absence of the reply, the defence of the petitioner/first defendant is likely to be seriously prejudiced. This Court is, therefore, of the view that this is a fit case for interference under Article 227 of the Constitution of India.

8. For the foregoing reasons, petitioner is relegated back to the position as it existed prior to 20.02.2024. He is granted permission to file a written statement on or before 15.04.2025, subject to deposit of cost of



CR-1119-2025

-5-

Rs.10,000/- with the Punjab and Haryana High Court Employees Welfare Association, Account No.37167209613, IFSC Code:-SBIN0050306 with State Bank of India, High Court Branch, Chandigarh. It is clarified that the deposit of cost would be a pre-condition to the grant of opportunity to file the written statement. Impugned order is modified accordingly.

9. Petition is disposed off.

04.03.2025

*sheetal*

**(SUVIR SEHGAL)**  
**JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No