



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**  
**ON THE 9<sup>th</sup> DAY OF SEPTEMBER, 2022**  
**BEFORE**  
**HON'BLE MR. JUSTICE SANDEEP SHARMA**  
**CIVIL MISC. PETITION MAIN (ORIGINAL) No.263 of 2022**

**Between:**

**SURENDER KAUR**

**.... PETITIONER**

**(MR. R.L. CHAUDHARY, ADVOCATE)**

**AND**

**SHRI JAGTENDER**

**.... RESPONDENT**

**(MR. BHUPENDER GUPTA, SENIOR  
ADVOCATE WITH MR. JANESH  
GUPTA, ADVOCATE)**

*Whether approved for reporting?. Yes.*

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*This petition coming on for admission this day, the Court passed the following:*

**ORDER**

Instant petition filed under Article 227 of the Constitution of India, lays challenge to order dated 12.5.2022, passed by the learned Civil Judge, Court No.3, Mandi, District Mandi, HP, in CMA No. 9-IV/2021, whereby an application under Order 9, Rule 7 CPC, having been filed by the petitioner-defendant, praying therein to set-aside the ex-parte order dated 9.11.2020, came to be dismissed.

**2.** Precisely, the facts of the case as emerge from the record are that respondent-plaintiff filed Civil Suit No. 258/2020 for declaration and injunction to the effect that the sale deed No. 1035/2019 dated 23.10.2019 is null and void and as such, petitioner be restrained from interfering in the suit land. Suit was listed before the court below on various dates. Though pursuant to notice issued to the petitioner, learned counsel for the petitioner-defendant had put in appearance in the court on one date i.e. 9.10.2020, but thereafter neither counsel nor petitioner-defendant chose to remain present in the court and as such, petitioner-defendant came to be proceeded ex-parte vide order dated 9.11.2020. After conclusion of final arguments, before pronouncement of final judgment, petitioner-defendant filed an application under Order 9 Rule 7 CPC, praying therein to set-aside the ex-parte order dated 9.11.2020. In the aforesaid application, petitioner-

defendant averred that since courts were not working on regular basis on 9.11.2020, on account of COVID-19 and on account of resolution of Bar Association, neither petitioner-defendant nor his counsel could put in appearance in the court, impugned order dated 9.11.2020 proceeding defendant *ex-parte* is not sustainable. However, aforesaid prayer made by the petitioner-defendant came to be resisted by the respondent-plaintiff on the ground that petitioner defendant was fully aware of the listing of the case on 9.11.2020 and prior to this date, counsel appearing for the petitioner-defendant had been appearing the Court, but learned trial court dismissed the application on the ground that same is not maintainable on account of its being filed after conclusion of the hearing. In the aforesaid background, petitioner-defendant has approached this Court in the instant proceedings praying therein to set-aside the aforesaid order.

**3.** Having heard learned counsel for the parties and perused the material available on record vis-à-vis reasoning assigned in the judgment impugned in the instant proceedings, this Court finds that after 9.10.2020, none put in appearance on behalf of the petitioner-defendant and as such, he came to be proceeded *ex-parte* on 9.11.2020. Respondent plaintiff led evidence and thereafter final arguments were concluded on 4.1.2021. It is only after conclusion of the final arguments, petitioner-defendant filed an

application under Order 9 Rule 7 CPC on 14.1.2021, claiming therein that courts were closed on account of COVID-19, however, aforesaid ground raised by the petitioner defendant came to be rejected being contrary to the record. When matter was listed on 9.10.2021, as is evident from the impugned order, it cannot be said that on that date, court was closed on account of COVID-19.

**4.** Leaving everything aside, after having perused provisions contained under Order 9 Rule 7 CPC, which are reproduced herein below, this Court finds that application for setting aside ex-parte order can only be entertained, if it is filed before the conclusion of the arguments. Any application filed after the conclusion of the arguments is not maintainable and in that eventuality, person being aggrieved on account of proceeded ex-parte order has a remedy to file appropriate proceedings under Order 9 Rule 7 CPC praying therein to set-aside ex-parte decree.

“7. Procedure where defendant appears 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.

**5.** While placing reliance upon judgment rendered by the Hon'ble Apex Court in **Arjun Singh v. Mohindra Kumar and Ors, AIR 1964 SC**

**993**, the Karnataka High Court in **Rabiya Bi Kassim v. Country-Wide Consumer Financial Service Ltd, 2005 (1) RCR (Civil) 271 ( Civil Revision Petition No. 3280 of 2001 with connected matters)**, has held that once case is finally heard and posted for judgment, application, if any, for setting aside ex-parte order is not maintainable. Relevant paras of the afore judgment read as under:

“9. On consideration, we are of the opinion that once the matter has been finally heard and posted for judgment, as held by the Supreme Court in Arjun Singh's case (supra) nothing is required to be done by the Court except to pronounce the judgment, and therefore the decision in Laxminarayan Enterprises case is not helpful. Admittedly, Clause (4) of Order 18 Rule 2, of CPC has been deleted and therefore the respondent-plaintiff cannot take advantage of Laxminarayan's case in the facts of the given case. Even if we assume it for the sake of argument without accepting, in view of the amendment in CPC, as we find, the law relating to procedure in suits and civil proceedings are governed by CPC, The CPC has been amended from time to time. Recently also, in order to cut short the delays at various levels in disposal of civil cases, CPC was amended by the Amendment Act of 1999 with effect from 1.7.2002. In the facts of the given case, sufficient opportunity was given to the plaintiff to complete his evidence, but he has not availed the opportunity at appropriate time and thereafter his evidence was closed. The case was fixed for defendant's evidence and ultimately the case was heard and reserved for judgment on 20.6.2001. In our view, if the matter is reserved for pronouncement of judgment, such an application is not maintainable as otherwise it will defeat the very object of amendment in speedy disposal of the cases.

10. As discussed above, in the facts of the case on hand, we are of the opinion that making an interlocutory application to reopen the case and record further evidence after the matter is reserved for pronouncement of judgment is not permissible. We answer the question referred for decision by holding that

no application can be filed after the final arguments have been heard and the matter is posted for judgment. The Single Bench decision of this Court in Laxminarayan Enterprises V. Laxminarayan Textile is not applicable in view of the decision of the Supreme Court and as stated above”

**6.** Consequently, in view of the above, this Court finds no illegality and infirmity in the order dated 12.5.2022, passed by the court below and accordingly, same is upheld and present petition is dismissed being devoid of any merit. Interim order, if any, stands vacated.

**9<sup>th</sup> September, 2022**

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**(Sandeep Sharma),  
Judge**

High Court