

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

C.R. No. 7854 of 2015

Date of decision:- 26.11.2015

Rajinder Singh @ Harjinder Singh & others

...Petitioners

Versus

Amarjit Singh and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Manish Dadwal, Advocate
for the petitioners.

RITU BAHRI J.(Oral)

Petitioners have filed the instant revision petition under Article 227 of the Constitution of India assailing order dated 08.05.2014 passed by the learned Addl. Civil Judge (Sr. Divn.), Hoshiarpur and order dated 29.10.2015 passed by learned Judicial Magistrate Ist Class, Hoshiarpur whereby the application of the petitioners dated 18.08.2015 for setting aside ex parte order, was dismissed.

Plaintiff/respondent Nos. 1 and 2 filed a suit for declaration to the effect that they are owners in possession of land measuring 16 kanals 5 marlas of property out of total 46 kanals 14 marlas and the petitioners filed their written statement on 23.10.2010. Thereafter, ex parte proceedings were order vide order dated 08.05.2014. The petitioners moved their application on 18.08.2015 for setting aside the ex parte order, which was also dismissed on the ground that the application was filed after 1 ¼ years and the plaintiff

has led the entire evidence. It was further observed that the defendants were not able to show sufficient cause for non-appearance on 08.05.2014. The explanation was with regard to illness of only one defendant.

Learned counsel for the petitioners contends that the rules applicable for setting the ex parte order or any proceedings are separate as compared to setting aside the decree, as held by Hon'ble the Supreme Court of India in a case of ***Harbans Prasad vs. State of U.P and others, 2014(6) RAJ 296*** and by this Court in a case of ***Nirmala Devi v. Hari Krishan, 2015 (3) Civ CC 389***. Further no prejudice will be caused to the plaintiffs. The non-appearance of the petitioners on 08.05.2014 was a bona fide mistake.

In view of the above, order dated 08.05.2014 passed by the learned Addl. Civil Judge (Sr. Divn.), Hoshiarpur and order dated 29.10.2015 passed by learned Judicial Magistrate Ist Class are hereby set aside and the instant revision petition is ***allowed*** and the petitioners shall proceed in the trial Court and cross examine the witnesses of the plaintiffs in due course,, subject to payment of Rs.13000/- as costs to be deposite before the District State Legal Services Authority, Hoshiarpur.

The petition is accordingly allowed.

November 26, 2015
G Arora

(***RITU BAHRI***)
JUDGE