

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

CR No.796 of 2014

Decided on: March 12, 2015.

Taj Mohd. And another

.... Petitioners

Versus

Dilawar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Sudhir Aggarwal, Advocate,
for the petitioners.

Respondents-plaintiffs exparte.

M.M.S. BEDI, J (ORAL)

The present revision petition has been preferred by defendants against order dated 20.12.2013 dismissing their application for setting aside exparte proceedings dated 17.09.2013.

I have heard learned counsel for the petitioners and gone through the record.

17.09.2013 was the first date of hearing in the suit filed by the plaintiffs-respondents. It was fixed for appearance of the defendants-petitioners but on account of their non-appearance on 17.09.2013, the following order was passed:-

“Present: Shri M.I Khan, counsel for the plaintiffs.

Notice issued to defendants through registered post. R.C. receipt submitted. None has appeared on behalf of the defendants. Therefore, defendants are proceeded against exparte. Now, to come up on 08.10.13 for exparte evidence.”

The petitioners-defendants moved an application for setting aside exparte proceedings dated 17.09.2013, which application was dismissed stating that the plea that counsel for the defendants was busy in

Palwal Court, cannot be accepted as a valid ground for setting aside ex parte proceedings.

It is settled principle of law that when a party does not appear on the date fixed for appearance, he can be proceeded against ex parte for said date. In case, he puts in appearance and participates in the further proceedings, he can be permitted to participate on the subsequent dates. In the present case, a reasonable ground has been given by the petitioners for non-appearance on the very first date. No serious prejudice would be caused to the plaintiffs-respondents in case defendants-petitioners are permitted to file written statement in accordance with law. The learned Presiding Officer seems to have shown extra ordinary rigidity. The order of dismissing the application for setting aside ex parte proceedings is apparently, illegal and unsustainable order.

The petition is allowed. The order dated 20.12.2013 is hereby set aside. The ex parte proceedings commencing from order dated 17.09.2013 against the petitioners are also hereby set aside. It is ordered that the petitioners-defendants will be entitled to participate in the further proceedings by filing written statement and would be entitled to contest the suit in accordance with law.

(M.M.S. BEDI)
JUDGE

March 12, 2015
harsha