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

CR-2957-2015

Date of decision : 28.01.2016

M/s Avtar Singh and Company and another

..Petitioners

Versus

Malwinder Singh @ Happy and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Roshan Lal Batta, Senior Advocate with
Mr. Mandeep K. Sajjan, Advocate
for the petitioners.

Mr. J.S. Toor, Advocate
for respondents No.1 to 3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The petitioners-defendants are aggrieved of the order dismissing the application filed under Order 9 Rule 13 as well as the appeal, on the premise that the petitioners-defendants have not taken any action against the counsel who was engaged to represent him as the counsel had caused inordinate delay in moving the application, much less, pursuing the matter before the trial Court.

Mr. Roshan Lal Batta, learned Senior Counsel assisted by

Mr. Mandeep K. Sajjan, learned counsel appearing on behalf of the petitioners, submits that the respondents-plaintiff filed a suit for recovery of ₹ 4,56,000/- along with interest @ 12% per annum on 01.02.2007 and in response to the receipt of the notice, the petitioners engaged Mr. Navtej Singh Sandha, Advocate, who had put in appearance on four occasions, but, thereafter absented and on 03.08.2007, ex parte proceedings were initiated. The aforementioned suit was ultimately decreed vide ex parte judgment and decree dated 07.02.2009. The petitioners received the decision of the ex parte judgment and decree, when the notice of the execution application was served on 27.09.2009. Accordingly, the application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure (hereinafter called 'CPC'), was filed on 24.10.2009. He submit that no doubt, though, no action has been taken against the counsel, but the application has been filed by engaging a different counsel. He further submits that this Court while issuing the notice of motion, had called upon the petitioners to furnish the security/deposit part of the decretal amount with the Executing Court for deferring the execution of the ex parte decree and prays that in case, the Court grants opportunity to contest the suit within a time line/frame, the petitioners would not delay the adjudication of the suit.

Mr. J.S. Toor, learned counsel appearing on behalf of respondent Nos.1 to 3 submits that the application under Order 9 Rule 13 CPC is wanting any explanation/cogent reasons of having

not contacted the lawyer within a period of two years, in essence, the date of the ex parte proceedings is dated 31.08.2007, till the passing of the ex parte judgment and decree in the year 2009. The application is lacking material particulars. The valuable right has accrued in favour of the respondent-plaintiff, as the petitioner-defendant owes money sought to be recovered by fixing a Court fee and prays for dismissal of the petition.

I have heard the learned counsel for the parties and appraised the paper book.

Shorn of the facts noticed above, I am of the view that no doubt, the petitioners-defendants had been negligent and callous in not contacting the lawyer for a period of nine months and has almost wasted the valuable time of the Court, by moving an application in the year 2009. However, this Court had already called upon the petitioners to furnish the adequate bank guarantee to the satisfaction of the Executing Court, which has been furnished on 04.07.2015. A copy thereof has been handed over during the course of the hearing. I am of the view that the following time schedule be framed for the disposal of the suit as expeditiously as possible:-

Within a period of 15 days from the date of receipt of the certified copy of this order, the petitioners-defendants shall file written statement and another 15 days, the replication, if any, would be filed and thereafter, the parties shall be given three effective opportunities each to lead evidence in support of his

respective claims, including the summoning of the witnesses by taking the assistance of the Court. Thereafter, the trial Court shall decide the suit as expeditiously as possible within a period of one year. However, since, the conduct of the petitioners-defendants has been found to be most callous and tardy, therefore, a cost of ₹ 50,000/- is imposed.

Keeping in view the aforementioned facts, the impugned order aforementioned is hereby set aside subject to the payment of cost of ₹ 50,000/-.

The cost of ₹ 50,000/- shall be paid in the shape of the Demand Draft/Local Cheque in the name of the respondent-plaintiff.

It is made clear that cost shall be condition precedent.

With the aforesaid observations, the revision petition is disposed of.

However, in case, the respondent-plaintiff is able to succeed in the matter, the bank guarantee furnished shall be encashed in favour of the respondent-plaintiff without any further delay.

28.01.2016
yogesh

(AMIT RAWAL)
JUDGE