

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

**CR No.5175 of 2016
Date of Decision-15.09.2016**

Seema Rani and others ... Petitioners
Versus
Neelam Rani ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akshay Jindal, Advocate for the petitioners.

Mr. B.S. Bedi, Advocate for the respondent.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been directed against the order dated 13.07.2016 passed by Civil Judge (Junior Division), Panipat whereby the application filed by the plaintiffs for setting aside the order dated 03.03.2015 was dismissed.

[2]. Respondent-plaintiff filed a suit for declaration to the effect that the General Power of Attorney dated 17.03.1999 executed by the plaintiff in favour of defendant No.1 and consequent sale deed dated 07.09.1999 executed by defendant No.1 on the basis of General Power of Attorney in favour of defendants No.2 and 3 in respect of suit property was illegal, null and void and was the result of fraud, misrepresentation and without consideration. The same was claimed to be not binding upon the rights of the plaintiff. Possession was also claimed with a consequential relief of permanent injunction restraining the defendants from alienating the suit property or creating any encumbrance over the same.

[3]. On 03.03.2015, none appeared on behalf of defendants and they were proceeded against *ex parte*. An application for setting aside the *ex parte* order 03.03.2015 was filed by the defendants on the ground that their non-appearance on the date fixed was on account of wrong noting of the date. The previous Advocate also did not appear in the case due to that reason and the defendants were proceeded against *ex parte*.

[4]. The said application was contested by the plaintiff on the ground that 03.03.2015 was fixed as a date for filing written statement being last opportunity. Defendants appeared before the Court on 11.11.2014 and on their request, the case was adjourned for 03.12.2014 for filing the written statement. Thereafter, the case was adjourned for 08.01.2015, 02.02.2015 and ultimately, for 03.03.2015 for the same purpose i.e. for filing the written statement. Since the written statement was not filed, therefore, 03.03.2015 was fixed as last opportunity for filing the written statement. On 03.03.2015, defendant and their counsel were repeatedly called, but they did not appear. Consequently, they were validly proceeded against *ex parte*.

[5]. Civil Judge (Junior Division), Panipat took notice of the fact that despite repeated calls made for appearance of defendants and their counsel, they did not appear in the Court, since last opportunity was given for 03.03.2015 for filing the written statement, therefore, non-appearance was taken to be a tactic for

delaying the disposal of the suit. Secondly, it was noticed that application for setting aside the order was moved on 09.04.2015 and even this application was not argued despite granting many opportunities by the Court. Owing to the conduct of the defendants, Civil Judge (Junior Division), Panipat did not grant indulgence for setting aside the *ex parte* order.

[6]. I have heard learned counsel for the parties.

[7]. Though the conduct of the petitioner is apparent, but the party should not suffer on account of any omission done by the counsel in not arguing the matter on some specified dates. Firstly, omission on the part of the defendants in not appearing on 03.03.2015 i.e. the date which was given as a last opportunity for filing the written statement was claimed to be on account of wrong noting of the date by the counsel. For that omission, defendants should have been burdened with costs on the ground that even if, period of 90 days for filing the written statement is not mandatory in view of **Salem Advocate Bar Association, T.N Vs. Union of India, (2005) 6 SCC 344**, still the defendants cannot flout directory requirement of law according to their whims. Non-appearance on 03.03.2015 may or may not have plausible explanation, but certainly by not arguing the application for setting aside the order dated 03.03.2015 by the learned counsel for the defendants is an omission which attracts heavy costs.

[8]. It is a cardinal principle of law that technicalities should not be placed against the cause of substantial justice. Meritorious matters cannot be thrown out at the threshold of technicalities. The conduct of the defendants through their counsel in not arguing the application for setting aside the order dated 03.03.2015 can best be adequately and suitably answered by way of imposing reasonable costs upon the defendants.

[9]. Though the learned counsel for the respondent has opposed the proposal for imposing adequate costs upon the defendants-petitioners, but still this Court is of the considered view that the omission on the part of Advocate should not come in the way of imparting justice between the parties and the said omission can be penalized by awarding adequate costs in favour of plaintiff-respondent.

[10]. In the light of aforesaid facts, I accept this revision petition. Order dated 13.07.2016 passed by Civil Judge (Junior Division), Panipat is hereby set aside, however subject to payment of costs of Rs.20,000/- to be paid to the plaintiff-respondent. Payment of costs shall be the condition precedent before proceeding further in the matter.

(RAJ MOHAN SINGH)
JUDGE

15.09.2016
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No