

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6215 of 2014

Date of Decision: 20.05.2016

M/s India Lease Development Ltd. and Another

... Petitioner(s)

Versus

Rajnish Behl and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

- | | | |
|----|---|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr.Yogesh Goyal, Advocate
for the petitioner(s).

Mr. Vaibhav Sahni, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside the orders dated 4.11.2006 (Annexure P4) and dated 15.5.2012 (Annexure P1), passed by learned Additional Civil Judge (Senior Division), Panchkula and order dated 3.3.2014 (Annexure P2), passed by learned Additional District Judge, Panchkula, whereby plea of petitioners for setting aside *ex parte* judgment & decree dated 4.11.2006 was declined and the first Appellate Court dismissed the application.

Learned counsel for the petitioners, while assailing the said

orders, submitted that petitioners failed to appear before the Court of first instance only because of the fact that case had been transferred from one Court or the other and they were not issued any notice regarding transfer of the case. They were not having any knowledge about pendency of the case and that is why they could not put in their appearance before the Court below and contested the suit. Immediately after coming to know about passing of the decree, application for setting aside *ex parte* judgment & decree dated 4.11.2006 was moved but the Court below dismissed the application and first Appellate Court dismissed the appeal, thereby causing grave injustice to the petitioners as they have not been given any opportunity of being heard and prayed that present petition be accepted and impugned orders be set aside.

Learned counsel for the respondents submitted that the Courts below have already considered all these facts while passing the orders under challenge. The application was filed much beyond the period of limitation. Petitioners were well aware of pendency of the suit for rendition of accounts before the Court of first appeal but intentionally failed to put in appearance. Earlier, the defendants put in appearance and failed to file written statement within the stipulated period of 90 days and defence of defendants was struck off. So it was not the case that petitioners were not aware of the proceedings before the Courts below, rather it is a case where petitioners opted to remain away from the Court and thereafter, moved an application for setting aside *ex parte* judgment & decree after considerable long time, which has rightly been declined by the Courts below.

Having considered the submissions made by learned counsel for

the parties and appraisal of the record, this Court is of the considered view that undisputedly the petitioners had been appearing before the Courts below and sought date for filing written statement. Thereafter, written statement was not filed and defence of defendants was struck off. Thereafter, the matter was pending before this Court by way of present revision petition and written statement was filed. Subsequently, the petitioners cannot remain away from the proceedings of the Court for a considerable long period. The Courts below have already appreciated the plea taken by the petitioners while deciding the application for setting aside *ex parte* judgment & decree. The *ex parte* judgment & decree was passed on 4.11.2006 and application for setting aside *ex parte* judgment & decree was filed on 14.3.2007.

The Court below has rightly placed reliance upon the High Court Rules & Orders Volume I, Chapter 13, Para 6 that in the event of transfer of the case from one Court to another, the party must appear before the other Court as a date is given and in case of non-appearance on that account, such a plea is legally not tenable. This view was taken by the Hon'ble Apex Court in ***Salil Dutta v. T.M. and M.C. Private Ltd. (1993) 2 Supreme Court Cases 358.***

In view of above, the Courts below have recorded concurrent findings that there are no grounds to set aside the *ex parte* judgment & decree and present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

May 20, 2016
“DK”