

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 7643 of 2014 (O&M)

Date of Decision: 02.02.2016

Satpal Sharma and Another

... Petitioner(s)

Versus

Karta Virender and Vikram Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

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

Mr. Vikram Singh, applicant/respondent
in person.

Shekher Dhawan, J.

Present petition is challenge to the order dated 4.9.2014, passed by learned Additional District Judge, Karnal, whereby application under Order 41 Rule 21 CPC for rehearing the appeal and setting aside order dated 3.11.2011, was dismissed.

Relevant facts of the case that civil suit under Section 26 read with Order 37 Rule 2 CPC read with Section 151 CPC for recovery of principal and interest amount on the basis of bond dated 14.4.2005 was filed by present respondent and in that suit, defendant/petitioners put in appearance before the trial Court on 5.5.2008 and filed address

for service of notice upon them. Summons for judgment were served upon them but they failed to appear before the Court and to obtain leave to defend and thus, were proceeded against *ex parte* on 16.7.2008. Civil suit was dismissed by learned Civil Judge (Junior Division), Karnal vide judgment dated 29.8.2011. Appeal was preferred against the said judgment and on presentation of appeal, learned Additional District Judge, Karnal, passed the following order:-

"Appeal received by assignment. It be checked and registered. There are some arguable points in this appeal. It be admitted. Since the respondents were ex-parte before the learned trial Court, so there is no need to issue process against them and their service is dispensed with. Trial Court records be summoned for 22.11.2011."

Learned Additional District Judge accepted the appeal and resultantly, suit of the plaintiffs for recovery of ₹ 1,00,145/- was decreed along with interest. Present petitioners moved an application under Order 41 Rule 21 CPC against orders dated 3.10.2011 and 20.9.2013, passed by learned Additional District Judge, Karnal and made prayer for rehearing of the appeal. Learned Additional District Judge dismissed the application vide order dated 4.9.2014 and present petition is challenge to the said order.

Learned counsel for the petitioners submitted that as per order dated 3.10.2011, no notice was issued against the present petitioners and their service was dispensed with. Thereafter, appeal was decided against the present petitioners. Petitioners were left with no

other alternative, except to move an application under Order 41 Rule 21 CPC for setting aside the order and the Court below dismissed the application without any reason and the said order be set aside.

Learned counsel for the petitioners placed reliance upon judgment rendered by this Court in case ***Bahadur Singh and others v. Kundan Singh and Another 1984 CurLJ 191***, wherein view was taken that if sufficient cause has been shown for non-appearance, *ex parte* decree is liable to be set aside. On the same point, reliance was placed upon the judgments rendered by Andhra Pradesh High Court in case ***K.N.V. Sri Rama Rao v. Government of Andhra Pradesh and Others 1999 AIHC 4380*** and by Jharkhand High Court in case ***Kunjal Singh and Another v. Most. Parvati Devi and Others 2002(2) ICC 258***, wherein view was taken that under order 41 Rule 21 CPC, if appellant was prevented by sufficient cause, rehearing of appeal should be ordered.

Respondent-Vikram Singh, who was arguing the matter personally, took the plea that present litigation is based on a civil suit having been filed under Section 26 CPC read with Order 37 Rule 2 CPC read with Section 151 CPC and the disposal of the said litigation requires summary proceedings. Petitioners were not having any defensible case and that is why they have chosen to remain away from the proceedings of the Court despite the fact that they had put in appearance at the initial stage of hearing before learned Civil Judge (Junior Division), Karnal on 5.5.2008 but thereafter, they chose not to contest the proceedings. Petitioners were fully aware that they were not

having any defensible case. First Appellate Court had passed the judgment & decree in appeal after taking into consideration the entire material and evidence available on the file.

Respondent also took the plea that present petition has been filed after 195 days and the same has not been filed within limitation period of 30 days and as such present petition is hopelessly time barred. Thus, the order passed by the Court below does not call for any interference and present petition be dismissed.

Respondent also placed reliance upon judgment of Hon'ble the Apex Court in case ***Rajni Kumar v. Suresh Kumar Malhotra 2003(4) ALL MR 312***, wherein it was observed that provisions of Order 37 Rule 4 CPC and Order 13 Rule 9 CPC are different for acceptance of application under Order 37 Rule 4 CPC. Applicant is to show special circumstances which prevented him from appearing or applying for leave to defend. Reliance was also placed upon the judgment rendered by the Division Bench of Bombay High Court in case ***M/s D.Shanlal and Others v. Bank of Maharashtra AIR 1989 Bombay 150(1)***, wherein a view was taken that in a summary suit when leave is not obtained by the defendant or leave is refused to him or where the defendant fails to comply with a conditional order, the defendant is precluded from further contesting the plaintiff's claim. The facts stated in the plaint must be considered to have been admitted by the defendant and the plaintiff becomes entitled to judgment under Order 37 CPC.

Having considered the submissions made by learned

counsel for the parties, this Court is of the considered view that in light of the background that the basis of litigation was civil suit filed under Order 37 CPC wherein special procedure has been set out to decide the case in summary manner. The trial Court vide order dated 28.3.2008 decided to proceed further as per provisions of Order 37 CPC. Due notice was served upon the present petitioners and they had put in their appearance before the Court on 5.5.2008. The trial Court served summons for judgment in Form No.4A in Appendix B. Thereafter, petitioners failed to appear and to obtain leave of the Court to defend the suit despite due service and appearance and the defendants were proceeded against *ex parte*. The Court below rightly observed that the sequence of events and conduct of present petitioners established that petitioners were aware of the proceedings of the Court but still not opted to seek leave to defend the suit. The suit was dismissed by the Court and appeal was accepted by First Appellate Court. The First Appellate Court had rightly dispensed with the service as petitioners were proceeded against *ex parte* before the Court below after putting in their appearance.

Learned Additional District Judge, Karnal has rightly observed that as per provisions of Order 41 Rule 21 CPC, rehearing can be ordered only on two grounds, firstly when the respondent satisfies the Court that notice was not duly served and secondly that he was prevented by sufficient cause from appearing when the appeal was called for hearing. But unfortunately, the case of petitioners does not fall under either of these categories. The Court below has also observed

on the basis of proceedings having taken place in the execution proceedings that petitioners were watching the proceedings while remaining away from the Court.

As per view take by Hon'ble the Supreme Court in case ***Rajni Kumar v. Suresh Kumar Malhotra*** (*supra*), the power under Rule 4 Order 37 is not confined to setting aside the *ex parte* decree, it extends to staying or setting aside the execution and giving leave to appear to the summons and to defend the suit. The Hon'ble Supreme Court also observed that very purpose of Order 37 is to ensure an expeditious hearing and disposal of the suit. Rule 4 empowers the Court to grant leave to the defendant to appear to summons and defend the suit if the Court considers it reasonable to do so, on such terms as the Court thinks so. It was further observed that provisions under Rule 4 Order 37 is different from Rule 13 Order 9 CPC.

As per view taken by the Division Bench of Bombay High Court in case ***M/s D.Shanalal and Others v. Bank of Maharashtra*** (*supra*), in a summary suit, when leave is not obtained by the defendant or leave is refused to him or where the defendant fails to comply with the conditional order, the defendant is precluded from further contesting the plaintiff's stand. By reason of the wordings of Order 37 Rules 2 & 3 CPC, there is further disability from the defendant. The facts stated in the plaint must be considered to have been admitted by the defendant and the plaintiff becomes entitled to judgment.

In view of above, view taken by learned Additional District Judge, Karnal, while passing order dated 4.9.20104 is strictly in

accordance with law and no interference is called for by way of present petition. So, present petition stands dismissed.

**(Shekher Dhawan)
Judge**

February 2, 2016

"DK"