

112 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CR No. 203 of 2017 (O&M)
DECIDED ON: MARCH 20, 2017

BANT SINGH AND ANOTHER

....PETITIONERS

VERSUS

LACHHMAN DASS

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. D.S. Gurna, Advocate
 for the petitioners.

JASPAL SINGH, J

By virtue of instant revision preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of impugned orders dated November 05, 2016 passed by learned District Judge, Patiala whereby, appeal against the judgment dated August 19, 2016 passed by learned Civil Judge (Sr. Division), Patiala was dismissed; judgment dated August 19, 2016 passed by learned Civil Judge (Sr. Division), Patiala whereby, an application moved by the petitioners under Order IX Rule 13 of the Code of Civil Procedure (for short 'Code') for setting aside the ex-parte judgment dated July 21, 2008 passed by learned Additional Civil Judge (Sr. Division), Patiala was dismissed; ex-parte judgment dated July 21, 2008 passed by learned Additional Civil Judge (Sr. Division), Patiala whereby, the suit of the respondent was decreed; an order dated September 29, 2017 whereby, the

petitioners were proceeded against ex-parte.

While assailing the impugned orders, it has been argued with vehemence by learned counsel for the petitioners that respondent-plaintiff instituted a suit for recovery of ₹2,72,000/- on the basis of pronote-cum-receipt dated November 11, 2005 alongwith interest @24% p.a. The said suit was decreed ex-parte against petitioners vide judgment and decree dated July 21, 2008 passed by learned Additional Civil Judge (Sr. Division), Patiala. Subsequently, petitioners preferred an application under Order IX Rule 13 of the Code for setting aside the ex-parte judgment and decree dated July 21, 2008 but that was also dismissed vide order/judgment dated August 19, 2016 passed learned Civil Judge (Sr. Division), Patiala. In fact in the civil suit titled as **Lachhman Dass vs. Bant Singh and another** the petitioners-defendants engaged a counsel to contest and defend the suit on their behalf. However, after appearing on some dates fixed in the suit their counsel absented from the Court. As such petitioners-defendants remained unrepresented due to which they were proceeded against ex-parte vide order dated September 29, 2007. Even, the written statement was not submitted by the counsel engaged by them on their behalf. On the basis of ex-parte evidence lead by respondent-plaintiff the said suit was decreed ex-parte vide judgment and decree dated July 21, 2008. Immediately on coming to know about the passing of afore-said ex-parte judgment and decree dated July 21, 2008, petitioners-defendants moved an application under Order IX Rule 13 of the Code for setting aside it. However, that application was dismissed by learned Civil Judge (Sr. Division), Patiala vide order dated August 19, 2016. An appeal preferred against the afore-said order dated August 19, 2016 was also dismissed by learned District Judge,

Patiala vide order dated November 05, 2016.

Learned counsel for the petitioners has urged that both the courts below have erred in not affording an opportunity to the petitioners to contest the suit on merits. The present case is not the one where the petitioners choose not to appear despite service. Rather it is the case where the petitioners remained unrepresented despite engaging a counsel. The suit preferred by the respondent-plaintiff is based upon a forged and fabricated pronote. Neither any loan was taken by the petitioners-defendants nor any pronote was executed by them. Both the courts below have also failed to appreciate the case of the petitioners-defendants on the touch stone of equity and substantial justice. Otherwise, also no party should be condemned unheard. Now an execution application preferred by the respondent-plaintiff is pending against the petitioners-defendants. Admittedly, amount has swelled into a huge amount and the orders with regard to the sale of property/house of the petitioners-defendants has already been passed by the executing court. Thus, equity and substantial justice demands that petitioners-defendants should be allowed to contest/defend the suit after setting aside the impugned orders passed by courts below dated November 05, 2016, August 19, 2016, July 21, 2008 and September 29, 2007.

After bestowing due consideration to the afore-said submissions made by learned counsel for the petitioners and scrutinizing the impugned orders, this Court is of the considered view that there is no legal or factual justification for causing an interference in the impugned orders for the reasons given below.

Undisputably, on receipt of notice of the suit for recovery of an amount ₹2,72,000/- based upon the pronote dated November 15, 2005,

petitioners-defendants had put in appearance in the Court through their counsel. A perusal of various orders available on record reveals that as many as six adjournments were obtained by the petitioners-defendants for filing the written statement spreading over more than four months. Subsequent thereto, petitioners/defendants as well as their counsel abruptly slipped away from the proceedings, the court was left with no option in such a situation except to proceed with the suit ex-parte against them. The mere fact that petitioners-defendants have engaged a counsel is not suffice to setting aside the ex-parte judgment and decree dated July 21, 2008, especially in the circumstances that petitioners-defendants opted not to contest the suit. No doubt, it is not obligatory upon the petitioners-defendants to appear on each and every date in a civil suit but at the same time they cannot be absolved of their responsibility to pursue the case. The engagement of a counsel for contesting a suit also does not mean that they are not suppose to appear or to know the fate of their suit or appeal. Rather it is their bounded duty to contact their counsel to know about the proceedings of their case. A counsel is not supposed to run after their clients. Petitioners-defendants cannot be allowed to shift their entire responsibility on their counsel.

A glance at the impugned orders reveal that petitioners-defendants were aware not only about the proceedings of the suit but also passing of the ex-parte judgment and decree dated July 21, 2008. Even they preferred objections in an execution application moved by respondent-plaintiff for the implementation of decree date July 21, 2008 and those objections were also dismissed.

Considering the case of the petitioners-defendants from another

angle there is a considerable delay in moving an application under Order IX Rule 13 of the Code, especially in the circumstances that petitioners-defendants were aware about the pendency of the suit as well as passing of ex-parte judgment and decree. There is no ground or plausible explanation for the condonation of inordinate delay in filing the application under Order IX Rule 13 of the Code, which is hopelessly time barred. Both the courts below have arrived at concurrent findings that there are no grounds for setting aside an ex-parte judgment and decree dated July 21, 2008 and further that an application moved under Order IX Rule 13 of the Code, is hopelessly time barred. There is no legal and factual justification to cause any interference in the impugned judgments/orders passed by both the courts below. Rather, filing of an application under Order IX Rule 13 of the Code is nothing but a device adopted by the petitioners-defendants to delay and defeat an execution of judgment and decree dated July 21, 2008.

In the light of what has been discussed above, this Court does not find any merit in the instant revision. As such, it stands dismissed.

No order as to costs.

MARCH 20, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*