

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.104

Civil Revision No. 2545 of 2016
DECIDED ON: March 09, 2017

ANIL SEKHRI AND ANOTHER

..PETITIONERS

VERSUS

AYUSH SEKHRI AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vikas Behl, Sr. Advocate with
Mr. Parvinder Singh, Advocate
for the petitioners.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated October 05, 2015 (Annexure P-5) passed by Civil Judge (Jr. Division), Ludhiana whereby, an application under Order XIV Rule 1 of the Code of Civil Procedure for framing issues for the purpose of decision of the application under Section 5 of the Limitation Act (for short 'Act'); has been dismissed.

While assailing the impugned order it has been argued with vehemence by learned counsel for the petitioners that the impugned order is not sustainable in the eyes of law being absolutely against the settled canons of law as well as provisions contained under Order XIV Rule 1 of the Code. Framing of issues is a very important stage in civil litigation and it is bounden duty of court that due care, caution, diligence and attention must be bestowed by Presiding Judge while framing issues, as has been observed by Hon'ble Apex Court in the case of *Ramrameshwari Devi v. Nirmala Devi*; (2011) 8 SCC 249; (2011) 4 SCC (Civ) 723. Moreover, for considering a claim, issue must be framed or any point determined based on the pleas, as has been observed by Hon'ble Apex Court in the case of *Gurbux Singh v. Harminder Kaur*; (2010) 14 SCC 301; (2012) 1 SCC (Civil) 437. In the case in hand framing of issue to the effect as to whether there is a sufficient grounds to condone the delay was required to be framed by learned trial Court. So, that the parties may led their respective evidence in respect of their respective claims. The non-framing of issues in the instant case has resulted into miscarriage of justice, as the petitioners were not afforded any opportunity to led evidence. Thus, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

This Court has given an anxious thought to the submissions made by learned counsel for the petitioners and has perused the documents available on file; besides, scrutinizing the impugned order but does not find any legal or factual substance, therein.

No doubt it is the bounden duty of the court to frame issues and take due care, caution, diligence and attention while framing the issues, as

has been observed by Hon'ble Apex Court in Ramrameshwari Devi's case supra. But each case has to be decided from its particular facts and circumstances and observation made in the afore-said authority cannot be apply as straight jacket formulae. The Hon'ble Apex Court in the case of **Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd;** (2009) 17 SCC 796 has held that there is no doubt that framing of issues is necessary in every contested regular civil suit but it is equally clear is the position that in proceedings which are intended to be summary in nature, issues are not required to be framed. Proceedings for setting aside ex-parte decrees, proceedings for restitution, proceedings for execution and proceedings for permission to sue as an indigent person, are illustrative of summary proceedings which are governed by the Code, where issues are not framed. In a summary proceedings, the respondent is given an opportunity to file his objections or written statement. Thereafter, the court will permit the parties to file affidavits in proof of their respective stands, and if necessary permit cross examination by the other side, before hearing arguments. Thus, framing of issues in such proceedings is not necessary. In another case **Sri Gangai Vinayagar Temple v. Meenakshi Ammal'** (2015) 3 SCC 624; non framing of an issue is not significant when parties are aware of rival cases and that issue is present in connected matters and evidence recorded on it without demur.

Adverting to the facts of the case in hand an application under Order IX Rule 13 of the Code for setting aside the ex-parte judgment and decree dated July 31, 2006 alongwith an application under Order XIV Rule 1 of the Code seeking condonation of delay in filing an application under

Order IX Rule 13 of the Code was filed, which has been disposed of vide separate order of even date. Vide impugned order October 05, 2016 an application for condonation of delay has also been dismissed.

Thus, this court is of the considered view that learned trial Court has rightly declined the framing of issues as the sole object of the petitioners is to delay and defeat the judgment and decree dated July 31, 2006 by one reason or other. As such the impugned order is absolutely in consonance with the legal proposition and requires no interference by this Court.

In the light of what has been discussed above, this court does not find any merit in the instant petition and same is dismissed, whereby the impugned order is upheld.

No order as to costs.

MARCH 09, 2017

SHAM

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No