

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.2642 of 2016

Date of decision:31.7.2017

State of Punjab and another

...Petitioners

Versus

Parminder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms.Anju Sharma Kaushik, DAG, Punjab,
for the petitioners.
Mr.N.K.Manchanda, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant revision petition, at the hands of State of Punjab, filed under Article 227 of the Constitution of India, is directed against the order dated 11.1.2016 (Annexure P-3) and also the order dated 20.7.2015 (Annexure P-2), whereby the learned trial court dismissed the application of the defendants-State of Punjab under Order 9 Rule 13 of the Code of Civil Procedure ('CPC' for short), for setting aside the ex parte judgment and decree dated 31.1.2013 and said order was upheld by the learned Additional District Judge, while dismissing the appeal of State of Punjab, vide its impugned order dated 11.1.2016.

Notice of motion was issued and thereafter further proceedings before the learned executing court were stayed.

Heard learned counsel for the parties.

It is a matter of record that the respondent-plaintiff filed a suit for declaration and mandatory injunction against the petitioners-State of

Punjab. It was recorded by the learned trial court in para 3 of ex parte judgment that notice of suit was given to the defendants but defendants did not put appearance and they were proceeded ex parte by the learned trial court, vide order dated 8.1.2013. Thereafter, the suit was decreed vide ex parte judgment and decree dated 31.1.2013. Plaintiff was seeking retiral benefits. Having come to know about the ex parte decree, defendants filed an application under Order 9 Rule 13 CPC, vide Annexure P-1A dated 1.8.2013 for setting aside the ex parte judgment and decree dated 31.1.2013 (Annexure P-1).

It was this application, which was dismissed by the learned trial court, vide order dated 20.7.2015, i.e. after about two years of its filing and the appeal filed by the State also came to be dismissed by the learned Additional District Judge, vide his impugned order dated 11.1.2016. Hence this civil revision petition, at the hands of defendants-State of Punjab.

A bare combined reading of both the impugned orders passed by the learned courts below would make it crystal clear that defendants-petitioners came to the court with clean hands. They did not try to take shelter of any lame excuses. It was admitted that service was effected as notices were received by the concerned clerk vide Diary No.5096 dated 3.1.2012. However, the reason for non appearance on behalf of the defendants was that the said concerned clerk did not put up the papers before the competent authority.

So far as merits of case were concerned, defendants pointed out minute details of the different payments made to the plaintiff-respondent in para 3 of the application (Annexure P-1A), which are available at pages 30 and 31 of the paper-book. Having said that, this Court feels no hesitation to

conclude that the learned courts below failed to exercise the jurisdiction vested in them, while passing their respective impugned orders because of which the impugned orders cannot be sustained.

The learned trial court, on the basis of pleadings of the parties, framed the following issues:-

- i. Whether the applicant is entitled for declaration as prayed for? OPA
- ii. Whether the present application of the applicant is not maintainable? OPD
- iii. Whether the applicants have not come to this court and have suppressed the material facts from the court? OPD
- iv. Whether the applicant has filed the present application with malafide intention? OPD

Before deciding the application under Order 9 Rule 13 CPC, findings recorded by the learned trial court on issues No.1 and 2 have been found patently illegal. Plaintiff did not lead any evidence on issue Nos.3 and 4 nor any of these issues were pressed by the plaintiff against the present petitioners-defendants. In spite of that, the learned courts below miserably failed to appreciate the true import of the totality of facts and circumstances of the case, before passing their respective impugned orders and the same cannot be sustained, for this reason also.

It is the settled principle of law that rules of procedure are meant for advancing the cause of justice. Every court of law must make an endeavour to grant reasonable opportunities to both the parties to put up their best case before the court. Nobody should be forced to go home with the grievance that sufficient opportunity was not granted by the court. By following this principle of law, learned court would achieve twin objects i.e.

(i) it would avoid multiplicity of litigation between the parties and (ii) the

court would be in a better position to do complete and substantial justice between the parties.

So far as the case in hand is concerned, there was no malafide intention on the part of the defendants-petitioners not to appear before the learned trial court, before they were proceeded against ex parte. Further, it seems that the plaintiff concealed some of the basic facts from the notice of the learned trial court at the time of passing of the ex parte decree, to the effect that he had already received different amounts on account of different retiral benefits. Had all these true facts been put by the plaintiff before the learned trial court, the ex parte decree would not have been passed in the manner it had been passed. Since the learned courts below failed to appreciate this material aspect of the matter, before passing the impugned orders, the same cannot be sustained, for this reason as well.

During the course of hearing, learned counsel for the plaintiff-respondent could not address any meaningful argument in support of the impugned orders. He also could not point out any prejudice, which is likely to be caused to the plaintiff by setting aside the impugned orders. On the other hand, a serious prejudice has been caused to the defendants-petitioners by passing the impugned orders and the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by the learned courts below have been found suffering from patent illegality and perversity, these cannot be sustained.

Accordingly, the impugned order dated 20.7.2015 (Annexure

P-2) and order dated 11.1.2016 (Annexure P-3) are hereby set aside. Consequently, the ex parte judgment and decree dated 31.1.2013 contained in Annexure P-1 are also set aside. Defendants-petitioners shall file written statement, before the learned trial court at an early date and thereafter, the learned trial court shall proceed further to decide the suit on merits after giving sufficient opportunities to both the parties to lead their respective evidence.

Resultantly, with the above-said observations made and directions issued, the present revision petition stands allowed, however, with no order as to costs.

31.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No