

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.4857 of 2017
Date of decision: 16.12.2017**

Nagar Panchayat Sahnewal and another

.... Petitioners

Versus

Kulwant Singh

..... Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mrs. Kavita Arora, Advocate for the petitioners.
 Mr. D.S. Gurna, Advocate for the respondent.

B.S. WALIA, J. (ORAL)

[1] Challenge in this petition under Article 227 of the Constitution of India is to order dated 25.10.2016 (Annexure P-2) passed by the learned Additional District Judge, Ludhiana in CA/100/ 2014 as well as order dated 09.09.2014 passed by the Court of the learned Civil Judge (Jr. Division), Ludhiana (Annexure P-1) dismissing the application under Order 9 Rule 13 of the CPC for setting aside ex parte judgment and decree dated 29.08.2011 (Annexure P3). Prayer is also for setting aside ex parte order dated 21.01.2011 (Annexure P4).

[2] Before I proceed further with the matter, it would be appropriate to take note of the fact that the application under Order 9 Rule 13 of the CPC was filed by the petitioner before the learned Civil Judge (Jr. Division), Ludhiana only qua the ex parte judgment and decree and not ex parte order dated 21.01.2011 (Annexure P-4). Consequently, order was passed by the learned Civil Judge (Jr. Division), Ludhiana dismissing the application under

Order 9 Rule 13 of the CPC only qua the ex parte judgment and decree and not qua the order dated 21.01.2014 (Annexure P4) proceeding ex parte against the petitioners.

[3] Brief facts of the case leading to the filing of the revision petition are that pursuant to notice issued in the suit filed by the plaintiff-respondent, counsel appeared on behalf of the defendants-petitioners before the learned Civil Judge (Jr. Division), Ludhiana on 13.12.2010 and filed power of attorney whereupon the case was adjourned to 21.01.2011 for filing of written statement. However, on the adjourned date i.e. 21.01.2011 none appeared on behalf of the defendants-petitioners nor was written statement filed. Consequently, the learned Civil Judge (Jr. Division), Ludhiana proceeded ex parte against the petitioner. Thereafter, the matter was adjourned to 21.02.2011, 26.03.2011, 27.04.2011, 04.06.2011, 22.07.2011, 02.08.2011, 20.08.2011 and finally 29.08.2011 on which date ex parte judgment and decree was passed against the defendants-petitioners.

[4] Application under Order 9 Rule 13 of the CPC was filed on 21.12.2011 on the ground that on 21.01.2011 a Clerk had been deputed to attend the Court of the learned Civil Judge who on approaching the Reader of the Court was told to come after lunch and after lunch he was told that the suit had been dismissed in default on account of non-appearance of the plaintiff-respondent. It was further mentioned that the defendants-petitioners learnt about the ex parte judgment and decree dated 29.08.2011 only when the plaintiff-respondent appeared in the office of the defendants-petitioners on 08.12.2011 seeking compliance of ex parte judgment and decree dated 29.08.2011.

[5] In the light of the aforementioned position, it was averred in the application that the same had been moved within 30 days from the date of knowledge, therefore, it was within time.

[6] Learned Civil Judge (Jr. Division), Ludhiana dismissed the application vide order dated 09.09.2014 by taking into account that counsel had put in appearance on behalf of the defendants-petitioners on 13.12.2010, therefore, pendency of the suit was within his knowledge. However, clerk as alleged by the applicant was present on behalf of the defendants-petitioners on 21.01.2011 and neither was any effort made by counsel for the petitioners-applicant to verify the position despite the fact that the case kept pending before the learned trial Court for nearly one year from the date when the defendants-petitioners were proceeded ex parte nor was any application moved by counsel for the defendants-petitioners for inspection of the case file or for obtaining certified copy of the order. In the light of the position as noted above, the learned Civil Judge (Jr. Division) recorded that the application was even otherwise barred in terms of Article 123 of the Limitation Act as having been filed beyond the period of limitation. Consequently, the application was dismissed.

[7] The defendants-petitioners thereafter filed an appeal against order dated 09.09.2014 passed by the Court of the learned Civil Judge (Jr. Division), Ludhiana. However, the same was also dismissed by the learned Additional District Judge vide order dated 25.10.2016 by observing that the learned Lower Court had appreciated the facts and circumstances of the case correctly while dismissing the application filed by the defendants-petitioners. It is in the aforementioned circumstances that the revision petition has been filed.

[8] I have considered the submissions made on behalf of the learned counsel for the petitioners as well as learned counsel for the respondent and am of the view that for the reasons recorded hereunder, the revision petition does not disclose any merit, therefore, has to be dismissed.

[9] Apparently counsel had put in appearance on behalf of the defendants-petitioners on 13.12.2010 and filed his power of attorney whereupon the case was adjourned to 21.01.2011 for filing of written statement. Neither was written statement filed nor was anybody present on behalf of the defendants-petitioners. The story put forward that the defendants-petitioners had deputed a clerk on 21.01.2010 who had reported that the suit had been dismissed in default also does not merit acceptance for the simple reason that firstly, once counsel had been engaged it was the duty of the counsel to put in appearance before the Court. Secondly, even if the suit had been dismissed in default and the story as put forward by the defendants-petitioners was to be accepted then it was necessary for them to show that at least an application had been made for obtaining certified copy of the order dismissing the suit in default. Nothing of this sort was done. The defendants-petitioners were in fact proceeded ex parte on 21.01.2011. Thereafter the case was adjourned for innumerable dates till passing of ex parte judgment and decree on 29.08.2011. Thereafter, the application for setting aside of ex parte judgment and decree alone was filed on 21.12.2011 on the ground that knowledge of ex parte judgment and decree was obtained on 08.12.2011. However, before this Court interestingly, in addition to the challenge to the order of the learned Additional District Judge upholding the order of the learned Civil Judge dismissing the application under Order 9 Rule 13 of the CPC for setting aside ex parte judgment and decree, challenge has also been incorporated to the ex parte order dated 21.01.2011 without

any such challenge having been raised in respect thereto in the application under Order 9 Rule 13 or for that matter in the appeal before the learned Additional District Judge. Learned counsel has not been able to show any provision of law on the basis of which such a course of action could have been adopted except referring to order dated 17.07.2017 (Annexure P-5) wherein revision petition filed earlier was withdrawn with liberty to file a fresh petition by laying challenge to order dated 21.01.2011. However, this is of no avail since learned counsel for the petitioners has not been able to refer to any provision of law wherein in the absence of the foundational order having been challenged in the application under Order 9 Rule 13 CPC a challenge can be raised to the said order in revision against the dismissal of the appeal.

[10] A perusal of the position as referred to above discloses a thoroughly negligent and callous approach of the petitioner Nagar Panchayat Sahnewal as well as its representatives. No case whatsoever has been made out warranting intervention with the order passed by the learned Additional District Judge dismissing the appeal against the order passed by the learned Civil Judge (Jr. Division), Ludhiana.

[11] In the light of the position as noted above, the revision petition is dismissed.

(B.S. Walia)
Judge

16.12.2017
amit

Note:

1. Whether the order is reasoned/speaking : Yes/No.
2. Whether the order is reportable : Yes/No.