

CR No. 6084 of 2015 (O&M)

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

**CR No. 6084 of 2015 (O&M)
Date of Decision: 6.10.2017**

Isham Singh and another

.....Petitioners

Vs.

Kalawati @ Kamla (since deceased) through LR's Devinder Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Mr. HPS Bhinder, Advocate for
Mr. Sushil Bhardwaj. Advocate
for respondent No.1.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the order dated 17.8.2015 (Annexure P-5) passed by the learned trial court, whereby their application for setting aside ex parte order dated 8.8.2011 (Annexure P-2) was dismissed, defendants have approached this court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and in the meantime, learned trial court was directed to adjourn the case beyond the date fixed before this Court.

Heard learned counsel for the parties.

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Vide order dated 8.8.2011 (Annexure P-2), defendants-petitioners were proceeded against ex parte by the learned trial court because none appeared on their behalf. When defendants-petitioners moved the application (Annexure P-3) for setting aside the abovesaid ex parte order dated 8.8.2011, even said application was dismissed by the learned trial court vide impugned order dated 17.8.2015. However, defendants were permitted to join the proceedings from 17.8.2015 onwards.

Learned counsel for the petitioners, at the very outset, fairly states that petitioners were not going to gain anything in absenting themselves on 8.8.2011. He further submits that the learned trial court ought to have allowed the application of the petitioners for setting aside the ex parte order and the plaintiffs could have been compensated by payment of reasonable costs. He prays for allowing the present civil revision petition by setting aside the impugned order.

Per contra, learned counsel for the plaintiffs-respondents vehemently opposed the contentions raised by the learned counsel for the petitioners, contending that petitioners did not appear on 8.8.2011 because of their malafide intention and the present revision petition is liable to be dismissed.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that instant revision petition deserves to be allowed, subject to payment of reasonable amount of costs by the petitioners-defendants. To say so, reasons are more than one, which are being recorded hereinafter.

Rules of procedures are meant for advancing the cause of

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justice. It is also the settled proposition of law that nobody should be condemned unheard. Although the learned trial court rightly allowed the petitioners-defendants to join proceedings of the case from 17.8.2015 onwards, yet not granting them an opportunity to file written statement and leading their evidence would certainly cause a serious prejudice to the petitioners-defendants. Having said that, this Court feels no hesitation to conclude that the learned trial court fell in serious error of law, while passing the impugned order and the same cannot be sustained.

In fact, keeping in view the peculiar fact situation, learned trial court ought to have allowed the application of the petitioners for setting aside the ex-parte order dated 8.8.2011 by directing the petitioners to compensate the plaintiffs by paying reasonable amount of costs and in that situation, suit might have been decided by now. Since the learned trial court could not appreciate the abovesaid factual as well as legal aspect of the matter at the time of passing the impugned order, the same has resulted in miscarriage of justice.

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 order has been found suffering from patent illegality, it cannot be sustained.

Accordingly, impugned order dated 17.8.2015 (Annexure P-5) passed by the learned trial court is hereby set aside. Defendants-petitioners shall be granted one opportunity to file their written statement and thereafter they shall be permitted to lead their evidence, in accordance with law,

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however, subject of payment of ₹10,000/-, as costs, by the petitioners-defendants to the plaintiffs-respondents on or before the next of hearing fixed before the learned trial court.

On the request made by learned counsel for the plaintiffs-respondents, it is left open to the learned trial court to consider and appreciate the evidentiary value of the statement of Smt. Kalawati @ Kamla-original plaintiff, who has passed away during pendency of the suit.

Resultantly, with the abovesaid observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

6.10.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No