

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 6659 of 2017 (O&M)
Date of decision:- 27.09.2017

M/s Modgill Sign & anr.

...Petitioners

Versus

B.S.N.L and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Naveen Bawa, Advocate
for the petitioners.

RITU BAHRI J. (Oral)

This petition under Article 227 of the Constitution of India is for setting aside order dated 02.08.2017 passed by the learned Civil Judge (Jr. Divn.) Ludhiana whereby application under Order 37 Rule 3(V) CPC filed by the respondents for leave to defend/content in suit dated 30.05.2015 has been allowed.

A bare perusal of the impugned order shows that plaintiffs-petitioners filed a suit under Order 37 CPC for recovery of principal amount of bill of Rs.3,33,912/- along with security amount of Rs.2,00,000/- with interest @18% per annum from, 23.05.2007 till the filing of the suit. Thereafter, the defendants-respondents did not appear despite being served. They then filed the application for leave to defend the case, stating therein that the claim of the petitioners is fully time barred as the last payment was made to them under the agreement on 5.02.2008 and thereafter, no amount has ever been taken under the said agreement. The last transaction for purchase of the goods was made by the defendants on 02.07.2013 and the last payment was made on 24.04.2013. The application was allowed and it

was held that the plaintiffs-petitioners have misrepresented the fact that the last transaction regarding purchase of goods was made on 02.07.2013 but the alleged recoverable amount has nothing to do with the agreement dated 06.03.2007. The burden was upon the plaintiffs to prove that how the suit is within limitation period and how the transaction took place in the year 2013 relates with agreement dated 06.03.2007 and thus the defendants are required to defend the present suit.

Learned counsel is seeking setting aside of the impugned order on the ground that no explanation has been given by the defendants-respondents that why they did not apply for leave to defend within 10 days.

This argument is liable to be rejected as the court below has rightly allowed the application by holding that the application cannot be dismissed only on the ground of technicalities.

The petition is dismissed.

September 27, 2017
G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No