

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

**CR No.7521 of 2016 (O&M)
Date of decision: 10.01.2017**

Delhi Financial Corporation and others

..Petitioners

Versus

Purshottam Dass Garg and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Pankaj Gupta, Advocate
for the petitioners.

Daya Chaudhary, J.

The present revision petition has been filed to challenge impugned order dated 07.02.2014 passed by Civil Judge (Junior Division), Chandigarh as well as judgment dated 26.07.2016 passed by the First Appellate Court.

Learned counsel for the petitioners submits that both the Courts below have misinterpreted the documents and oral evidence available on the record and also the mandatory provisions of law applicable. Only the untrustworthy evidence adduced by the respondent-plaintiff has been relied, which has resulted into grave miscarriage of justice to the petitioners. Learned counsel further submits that ex-parte order dated 11.09.1997 and judgment and decree dated 10.10.2005 passed in favour of respondent-plaintiff and against the petitioners are not as per provisions of law and the same are liable to be set aside. The application moved by the petitioners was dismissed wherein a specific plea was raised that wrong date was noted

down. A wrong finding has been given by the Trial Court that there was no *bonafide* on the part of the petitioners. At the end, learned counsel for the petitioners submits that the application moved by the petitioners under Order 9 Rule 13 CPC for setting aside order dated 11.09.1997 as well as judgment and decree dated 10.10.2005 of lower Appellate Court has wrongly been dismissed and the petitioners-defendants were proceeded ex-parte. There was no fault on the part of the petitioners and irreparable loss would be caused to them.

Heard arguments of learned counsel for the petitioners and have also perused the impugned orders passed by the Trial Court as well as First Appellate Court.

The plaintiff-respondent filed a suit for declaration against the petitioners in the year 1995 and they appeared through their counsel. The counsel representing them could not appear and the case was proceeded ex-parte. Ultimately, suit was decreed vide judgment and decree dated 10.10.2005.

In the application, it was argued that irreparable loss would be caused as the petitioners-defendants were to repay the loan and the plaintiff stood as a guarantor for the defendants, who took loan of ₹4,52,500. Said application was contested by filing reply wherein it was mentioned that the application was not maintainable and the same was liable to be set aside on the ground that the application for setting aside ex-parte order dated 11.09.1997 was already dismissed on 12.05.1998. It was also mentioned in the reply that defendants were proceeded against ex-parte after serving of notice and the remedy available to the applicant-defendants was to file

appeal under Section 96(2) and not to move application under order 9 rule 13 of CPC. It was also denied that the plaintiff-respondent neither stood as a guarantor nor signed any guarantee deed in favour of applicant-defendants. Said application was dismissed vide order dated 07.02.2014 on the ground that the petitioners-defendants were having knowledge of pendency of the suit in the year 1998 and thereafter, no efforts were made by him to proceed in accordance with law. The petitioners were sleeping over their rights and the application for setting aside ex-parte order was filed on 29.01.2008 i.e. after a period of 10 years.

Said order dated 07.02.2014 was challenged by way of filing appeal before Additional District Judge, Chandigarh, which was also dismissed and order passed by the Trial Court was upheld vide order dated 26.07.2016.

In the impugned order, it is clearly mentioned that the applicant-petitioners put in appearance in the Court through their counsel in the year 1995 and thereafter, none appeared on their behalf and the case was proceeded ex-parte. The application for setting aside the ex-parte order was filed by the petitioners-defendants on 29.01.2008 on the ground that wrong date was noted down as 10.10.1997 instead of 11.09.1997. Nowhere it has been mentioned in the application as to whether the petitioners appeared on the date, which was wrongly noted down by them. During this period, no efforts were made by the petitioners-defendants to verify the status of the case or to know as to what happened in the case. Meaning thereby, the petitioners remained silent or slept over their rights approximately for a period of 10 years. The ex-parte order was passed on 11.09.1997 and the

judgment and decree against the petitioners-defendants was passed on 10.10.2005.

By moving an application under Order 9 Rule 13 CPC, the prayer for setting aside ex-parte order dated 11.09.1997 has been made and the judgment and decree dated 10.10.2005 has also been challenged. It is also mentioned in the order passed by the Lower Appellate Court that another application under Section 151 CPC to cross-examine plaintiff's witnesses was moved, which was disposed of on 11.10.2001 and the appellants were allowed to cross-examine plaintiff's witnesses, which shows that the ex-parte order was in the knowledge of the petitioners. Again the petitioners did not appear and ultimately case was decided vide judgment dated 10.10.2005 and the ex-parte decree has been passed. The conduct of the petitioners shows that in spite of having knowledge, no action was taken by them in the application. It was mentioned that they were not having any knowledge about ex-parte order whereas during this period, they were aware about order as an application under Section 151 CPC to cross examine plaintiff's witnesses was moved.

Nothing has been mentioned in the application as well as in the arguments as to why the petitioners remained silent and did not challenge both the orders.

It is a settled position of law that ex-parte order can be set aside when exceptional circumstances are there. The Court may exercise its inherent powers apart from Order 9 Rule 13 CPC to set aside an ex-parte decree when the case is to be made out and the party is not at fault or where the absence of the party is caused on account of a mistake of the Court and

an ex-parte order has been obtained by fraud upon the Court or by collusion.

In the present case, none of the situation is there to challenge the ex-parte judgment/decree. Simply it has been mentioned that wrong date was noted down and the application was also moved after a delay of approximately 10 years by mentioning the wrong fact that the petitioners were not aware about the status of the case whereas an application was already moved, which was dismissed. The conduct of the petitioners shows that they have not approached this Court with clean hands.

Accordingly, I find no reason to interfere with the impugned orders and as such, revision petition being devoid of any merit is dismissed.

10.01.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No