

HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 7750 of 2016

Date of decision: 03.05.2017

Rajni Bala and another

...Petitioners

Versus

Sanjay Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rose Gupta, Advocate
for the petitioners

Mr. Akshay Kumar Goel, Advocate
for respondent No. 1

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the hands of the defendants-petitioners filed under Articles 227 of the Constitution of India, is directed against the order dated 04.11.2016 (Annexure P-12), passed by the learned trial Court whereby application of the petitioners for setting aside the order dated 09.05.2016 (Annexure P-8) vide which they were proceeded against ex-parte, was dismissed.

Notice of motion was issued and in the meantime, passing of final order was stayed.

Heard learned counsel for the parties.

A bare perusal of the impugned order dated 04.11.2016 (Annexure P-12) passed by the learned trial Court would show that it is a patently illegal and non-speaking order. Petitioner No. 1 was widow and petitioner No. 2 is her minor son. The petitioners have furnished sufficient explanation in the application (Annexure P-10) referring to the circumstances because of which the petitioners were proceeded against ex-parte vide order dated 09.05.2016. It was specially pleaded by

the defendants-petitioners that they did not get any information from their counsel, who was representing them at that point of time, about the date of hearing on 09.05.2016 and later as well.

Learned trial Court was expecting too much from the petitioners that they must have proceeded against the counsel for his alleged negligence. Negligence, if any, on the part of the counsel, was beyond the control of the petitioners. Learned trial Court ought to have considered and appreciated the fact situation obtaining on record of the present case. However, learned trial Court failed to do so while passing the impugned order dated 04.11.2016 (Annexure P-12) and the same can not be sustained, for this reason as well.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Every Court of law must grant reasonable opportunity to the litigating parties to put their best case before the Court. Nobody should be forced to go home with the grievance that sufficient opportunity was not granted. While following the abovesaid principle of law, the learned Court shall achieve twin objects; namely, (i) it will avoid multiplicity of litigation between the parties and (ii) the learned Court will do complete and substantial justice between the parties. However, since the learned trial Court failed to appreciate and follow the abovesaid principle of law in the present case, while passing the impugned order it cannot be sustained, for this reason as well.

During the course of hearing, learned counsel for the respondents–plaintiffs could not raise any meaningful argument in support of the impugned order and rightly so it being a matter of record. The impugned order has been found running contrary to the true facts of the case as well as the settled principles of law, because of which the impugned order 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 order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 04.11.2016 (Annexure P-12) is hereby set aside. Application moved by the defendants-petitioners for setting aside the order dated 09.05.2016 whereby they were proceeded against ex-parte would stand allowed. Learned trial Court is directed to allow the defendants-petitioners to lead their evidence granting them sufficient opportunity. Thereafter, the suit shall be decided at an early date, in accordance with law.

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

03.05.2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No