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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1973-2017 (O&M)

Date of decision : 25.04.2018

Kuldeep Singh and others

... Petitioner(s)

Versus

Karam Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Dhandiwal, Advocate
for the petitioners.

Mr. S.S. Panag, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

CM-23326-CII-2017

Annexures P-6 and P-7 filed along with the application are taken on record, subject to all just exceptions.

CM stands disposed of.

CR-1973-2017

The present revision petition is directed against the impugned order dated 11.09.2014 (Annexure P-6), whereby *ex parte* proceedings against the petitioners- defendant Nos.1 to 4 have been initiated as well as the order dated 16.02.2017 (Annexure P-5), vide which, application for setting aside the *ex parte* proceedings, has been dismissed.

Learned counsel appearing on behalf of the petitioners- defendant Nos.1 to 4 submitted that the respondent-plaintiff instituted the

suit for possession by way of specific performance of agreement to sell dated 14.06.2010 in respect of land measuring 54 kanals. The petitioners-defendant Nos.1 to 4 had appeared and filed the written statement on 18.05.2011 along with a counter-claim. There was another suit titled as “Makhan Singh V/s Kuldeep Singh and Karam Singh” seeking possession by of specific performance of another contract dated 03.12.2008 executed by defendant No.1 in favour of the plaintiff in respect of the land measuring 55 kanals 3 marals. Both the suits were pending in the same Court, but the first suit had been dismissed in default on 11.09.2014. However, on 11.09.2014, counsel for the petitioner-defendant Nos.1 & 2 was very much present in the Court and filed written statement to the amended plaint, which fact is evident from the zimini orders extracted in ground No.5 of the revision petition. The present petitioner had engaged the services of his counsel at Moga, but all the cases were transferred to Bagha Purana. Counsel ensured that there was no necessity for the petitioners to appear before the Court below and he would be appearing in the Court at Bagha Purana. It is, in that aspect of the matter, the *ex parte* proceedings were initiated vide order dated 11.09.2014. The aforementioned factum was not in the knowledge of the petitioners-defendant Nos.1 to 4 and when he acquired the knowledge, moved an application for setting aside *ex parte* proceedings in the year 2016, which has erroneously been dismissed vide order dated 16.02.2017 (Annexure P-5). The non-appearance of the counsel was neither intentional nor wilful. No harm and prejudice would be caused in case the petitioners-defendant Nos.1 to 4 join the proceedings, subject to any terms and conditions, which this Court may fit appropriate.

Learned counsel appearing on behalf of the respondent-plaintiff

submitted that during all this period, the petitioner had examined seven witnesses. No explanation reasonable or justifiable has come forth in not moving the application immediately. It was an intentional fault as in another suit, the petitioner had been appearing. There is no justification in moving the application belatedly and this is what the import of the impugned orders, under challenge, thus, urges this Court for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Dandiwal. Facts of the case say that "Act of the Court Prejudice None", but here it was a case, where the suit which was pending at Moga had been transferred to Bagha Purana. It was the duty of the Court to send notices to the parties for appearance. Though the petitioners could not solely rely upon the assurances of the counsel and were expected to ascertain the status of the suit, for which, their action can be said to be a tardy and negligent as the application was moved in the year 2016, therefore, they are liable to pay the costs. All these factors, in my view, could have been looked into by the Court below by putting certain costs.

As an upshot of my observations, the impugned orders dated 11.09.2014 (Annexure P-6) and 16.02.2017 (Annexure P-5), are not sustainable in the eyes of law and the same are hereby set aside. The application for setting aside *ex parte* proceedings is allowed and the *ex parte* proceedings against the petitioner-defendant Nos.1 to 4 are set aside. The petitioners-defendant Nos.1 to 4 are directed to cross-examine the witnesses of the respondent-plaintiff. However, it shall be subject to the costs of ₹30,000/- which shall be condition precedent.

With the aforesaid observations, the present revision petition stands allowed.

25.04.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No