

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

CR No.3862 of 2015

Date of Decision: 14.05.2018

Gram Panchayat Village Ramgarh Petitioner
Vs
Hakam Singh Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rakesh Gupta, Advocate
for the appellants.

Mr. Vikas Mehsempuri, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner-Gram Panchayat has preferred this revision petition for setting aside the order dated 15.04.2015 passed by Additional District Judge, Patiala vide which order dated 30.05.2014 passed by Civil Judge Junior Division, Nabha, dismissing the application under Order 9 Rule 13 CPC was upheld.

[2]. Respondent Hakam Singh filed a suit against the petitioner/Gram Panchayat seeking recovery of a specified amount. It was alleged that he remained Sarpanch on the post till June 1998 and during his tenure, he spent Rs.60,460.05 paise towards development work of the village from his own

pocket. At that time, funds were not available and as soon as the same will be made available, the Panchayat will pay the same. Panchayat did not pay the amount to the then Sarpanch and the suit came to be filed.

[3]. Gram Panchayat appeared and contested the suit. Gram Panchayat engaged Mr. Harinder Singh, Advocate in the year 2005. Fresh elections were held in the year 2008 and new Sarpanch came to be elected. After expiry of the term of Panchayat, when new Panchayat came into being, the Advocate representing the Panchayat on account of earlier authorization sought adjournment to have fresh instructions from the Gram Panchayat on 07.01.2009. Learned counsel for the Gram Panchayat made a request to the Court that the Gram Panchayat has been changed and he wanted to take instructions from the Gram Panchayat. At that stage, plaintiff's witness was present in the Court for cross examination. The request was allowed. The plaintiff's witness was bound down for 20.02.2009. On 20.02.2009, learned counsel for the Gram Panchayat pleaded no instructions by recording his statement. On 20.02.2009, following order was passed:-

“Present: Counsel for the parties.

PW is present for cross examination. Ld. counsel for defendant pleaded no instructions. Cross examination of PW 3 is declared nil. Despite repeated

calls, none appeared for defendant. Hence defendant is proceeded against ex parte. Ld. counsel for the plaintiff closed his evidence. Now to come up on 03.03.2009 for ex parte consideration.

Sd/-

CJ/20.02.2009”

[4]. Civil Judge, Junior Division on the basis of no instructions pleaded by learned counsel for the defendant/Gram Panchayat, treated the cross examination of the plaintiff's witness to be nil. Since none appeared on behalf of the Gram Panchayat, therefore, defendant/Gram Panchayat was proceeded against *ex parte*. Learned counsel for the plaintiff closed the evidence and the case was adjourned for *ex parte* consideration of the case. The suit was decreed *ex parte* vide judgment and decree dated 17.03.2009.

[5]. Thereafter, the petitioner/Gram Panchayat filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside the judgment and decree dated 17.03.2009 passed by the trial Court. The ground taken in the application was that the counsel for the defendant had never communicated to the applicant, nor the applicant was aware about the fixed date, when it was proceeded against *ex parte*. Evidently, the mis-conduct on the part of the counsel was alleged in not

providing due service to the client.

[6]. Trial Court dismissed the application vide order dated 30.05.2014. Petitioner/Gram Panchayat remained unsuccessful in the appeal before the District Judge, Patiala who also dismissed the appeal vide judgment dated 15.04.2015. That is how, the present revision petition came to be filed.

[7]. I have heard learned counsel for the parties.

[8]. Learned counsel for the petitioner contended that it was not a simplicior case of pleading no instructions on behalf of the Gram Panchayat. Counsel for the Gram Panchayat was engaged during tenure of previous Panchayat. When new Panchayat came into being, learned counsel for the Gram Panchayat specifically apprised the Court that the term of the previous Panchayat had expired and a new Panchayat has taken over the charge. In order to have further instructions from new Panchayat, learned counsel sought time from the Court on 07.01.2009. The Court recorded the fact that the case was fixed for plaintiff's evidence, but the counsel made the request that Gram Panchayat has changed and therefore, he wanted to take instructions from the defendant/Gram Panchayat. The said prayer was allowed by the trial Court and the case was adjourned for 20.02.2009. It was only on 20.02.2009, on pleading no instructions, cross examination of PW 3 at the

instance of the Gram Panchayat was treated to be *nil* and defendant was proceeded against *ex parte*. After closing the plaintiff's evidence, the case was adjourned for *ex parte* consideration of the case and ultimately, the same was decreed *ex parte* vide judgment and decree dated 17.03.2009. The background in which no instructions were pleaded was on account of change of Panchayat. Panchayat has to pass some resolution in order to carry on with earlier counsel or Panchayat might be in the mood to change the counsel.

[9]. In the aforesaid context, learned counsel relied upon **Malkiat Singh Vs. Joginder Singh, 1998(1) RCR (Civil) 277,** **Manwinder Singh Vs. Manjeet Kaur, 2015(8) RCR (Civil) 637,** **M/s AA Enterprises Vs. Er. J.S. Sekhon, Purchase Officer-V, PSEB, Patiala, 2009(3) RCR (Civil) 144, Avtar Singh and another Vs. Amarjit Singh and others, 2016(3) PLR 309** and **Gram Panchayat, Sarswati Khera Vs. Ram Kishan and others, 2001(1) RCR (Civil) 189** and contended that in the event of pleading no instructions, particularly in the background of the case, the Court ought to have issued notice to the party. Trial Court was enjoined upon an obligation to issue notice to the party. Since the same was not done, therefore, the suit ought not to have been decreed *ex parte* and consequently, application under Order 9 Rule 13 CPC for setting aside the ex

parte decree ought to have been allowed.

[10]. On the other hand, learned counsel for the respondent submitted that the case was fixed for plaintiff's evidence and learned counsel for the Gram Panchayat was reluctant to cross examine the witness. In the event of no instructions, petitioner/Gram Panchayat should have engaged another Advocate and it was the duty of the counsel to inform the defendant in time.

[11]. Having considered the submissions made by learned counsel for the parties, I am of the view that the trial Court was legally obliged to inform the defendant in the event of pleading no instructions by the then counsel. Pleading no instructions by the counsel was under some background which has already been spelt out in the preceding para of the order. In my considered opinion, the Courts below have taken hypothetical view of the matter. The merits of the case should not be thrown at the threshold of technicalities. When cause of justice is pitted against the technicality, the cause of justice should prevail.

[12]. In the light of precedents cited by learned counsel for the petitioner, I deem it appropriate to accept this revision petition. In view of above, impugned orders dated 15.04.2015 passed by Additional District Judge, Patiala and 30.05.2014 passed by Civil Judge Junior Division, Nabha are set aside.

Revision petition is accordingly allowed. Case is remanded to the trial Court with a direction to restore the suit and to proceed in accordance with law.

May 14, 2018

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No