

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

CR No.3545 of 2018

Date of Order: 27.09.2018

M/s Semitronik Industries

....Petitioner

Versus

M/s G.M.P Finishing Mill and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Samit Rathaur, Advocate for the petitioner.

B.S.WALIA, J (ORAL)

[1] Challenge in the revision petition is to order dated 10.11.2016 (Annexure P.6) passed by the learned Addl. Civil Judge (Sr. Division), Amritsar in Civil Misc. No.346 whereby the application filed by the petitioner under Order 9 Rule 13 CPC for setting aside ex parte judgment and decree was dismissed as also judgment dated 10.1.2018 (Annexure P.8) passed by the learned Addl. District Judge, Amritsar in Case No.42 of 2016 dismissing the appeal preferred against the same.

[2] Learned counsel contends that the impugned orders were passed by the learned courts below contrary to the mandate of Order 9 Rule 13 CPC as sufficient cause for non-appearance of the petitioner was made out, therefore, the application filed by the petitioner deserves to be allowed and the ex parte judgment and decree dated 28.04.2012 passed by the learned Civil Judge (Jr. Division), Amritsar in RBT Civil suit No.447 (Annexure P.4) as well as impugned order liable to be set aside and the petitioner be allowed to participate in the proceedings.

[3] I have considered the submissions of learned counsel for the petitioner but am unable to agree with the same.

[4] A perusal of Annexure P.6 reveals that the petitioner had filed an application for setting aside the ex parte judgment and decree dated 28.4.2012 on the ground that a dispute amongst the parties was with regard to machinery supplied by the petitioner but during the pendency of the suit, the respondent-plaintiff had told the petitioner-defendant that the machinery in respect of which the civil suit had been filed against the petitioner-defendant, was working perfectly well, therefore he did not wish to pursue the civil suit whereupon the petitioner-defendant stopped appearing in the civil suit by presuming that the civil suit had been withdrawn. The application was dismissed on the ground that the petitioner-defendant had put in appearance after being served, filed written statement but thereafter stopped participating in the proceedings, thus, the petitioner did not substantiate his having been prevented by sufficient cause from appearing in the proceedings. Besides, earlier the ex parte proceedings ordered against the petitioner on 07.08.2007 had been set aside subject to payment of costs of Rs.500/- on 20.8.2009 whereafter again costs were imposed on the petitioner-defendant on 07.10.2009 which were also paid on 16.11.2009. Costs were imposed for the third time also, which were paid on 15.2.2010. Thereafter, the petitioner again absented from the proceedings and was proceeded against ex parte.

[5] In the light of the position as noted above, the petitioner has failed to make out a case showing sufficient cause for not participating in the proceedings. Thus, the petitioner, in the opinion of this Court, deliberately avoided appearance despite having knowledge of the date of

hearing of the civil suit. In the absence of any relevant material on record showing that the petitioner was prevented by sufficient cause from appearing when the suit was called on for hearing, no interference is warranted with the impugned orders passed by the learned courts below.

[6] Dismissed in limine.

September 27, 2018
manoj

(B.S.WALIA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No