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

CR No.3729 of 2018 (O&M)
Date of Decision: 30.05.2018

M/s Shri Shakti Rice Mills Machhiwra and another

....Petitioners

Vs

M/s Nathu Ram Pawan Kumar and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Lakhwinder Singh Mann, Advocate,
for the petitioners.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioners have preferred this revision petition against the order dated 02.05.2018 passed by the trial Court vide which application filed by the petitioners under Order 16 Rule 14 read with Section 151 CPC and Section 165 of Evidence Act for production of relevant record of copying agency of the concerned Court and examination of concerned employee/official of the copying agency was dismissed.

2. The main litigation pending before the trial Court is in the form of application under Order 9 Rule 7 and 13 read with Section 151 CPC for setting aside exparte judgment and decree dated 06.08.2007 passed by Additional Civil Judge (Senior Division), Samrala in case titled "M/s Nathu Ram Pawan Kumar Commission Agent Grain Market, Machhiwara, Tehsil Samrala,

District Ludhiana versus M/s Shri Shiv Shakti Rice Mills Machhiwara and others”.

3. In the aforesaid proceedings, an application was filed for production of relevant record of the copying agency along with examination of concerned official. The question arose for consideration was “certified copy of judgment and decree was delivered to whom?” In the aforesaid suit titled “M/s Nathu Ram Pawan Kumar Commission Agent Grain Market, Machhiwara, Tehsil Samrala, District Ludhiana versus M/s Shri Shiv Shakti Rice Mills Machhiwara and others” vide CD No.426 dated 30.01.2014, petitioner sought issuance of appropriate order for production of aforesaid record in order to clear any doubt with regard to answer knowledge for satisfying any limitation or delay on behalf of the petitioners. The production of aforesaid document in evidence was claimed to be necessary for proper and effective adjudication of application for restoration before the trial Court.

4. The application was contested on the ground that no application for restoration of suit was pending and no question arose as to whom certified copy of judgment and decree was delivered in the aforesaid suit, rather the question before the Court was whether the application under Order 9 Rule 13 CPC filed by the petitioners was within limitation or any sufficient

grounds were made out to condone the delay.

5. Photocopy of the judgment of the aforesaid civil suit was placed on record by the petitioners themselves. They have not mentioned in the application as to from whom the photocopy of the judgment and decree was taken.

6. The controversy is in the form of setting aside exparte judgment and decree. An application under Order 9 Rule 13 CPC was filed by the petitioners for setting aside exparte judgment and decree dated 06.08.2007 passed in the aforesaid suit titled "M/s Nathu Ram Pawan Kumar Commission Agent Grain Market, Machhiwara, Tehsil Samrala, District Ludhiana versus M/s Shri Shiv Shakti Rice Mills Machhiwara and others".

7. The case has already reached upto the stage of final arguments. When the case was fixed for final orders, the application in question came to be filed for passing an order for production of relevant record in order to clarify the aforesaid position as to whom certified copy of the judgment and decree was supplied.

8. The application in question was filed on the ground that the petitioners came to know about the exparte judgment and decree dated 06.08.2007 on 15.05.2015 when they appeared in the execution proceedings filed by the respondent-decree holder against them. Earlier they were not in the

knowledge of exparte judgment and decree and therefore, from the date of knowledge, they filed the application under Order 9 Rule 13 CPC. The applicants were in the knowledge of exparte judgment and decree as admitted by the parties. The applicants themselves in their documents have filed copy of judgment and decree dated 06.08.2007.

9. Perusal of CD would reveal that the same was got prepared on 22.02.2014 and delivered on 25.02.2014 and knowledge can be reflected from the aforesaid fact.

10. Since the arguments have already been concluded and the matter is stated to be fixed for final orders, at this stage, filing of the application for the relief claimed in my considered opinion, would be far fetched. The application is not for restoration of suit as claimed by the petitioners, rather the same is for setting aside exparte judgment and decree dated 06.08.2007. The application is found to have been presented at such a belated stage where consideration of the application would result in material prejudice to the respondents. Though the Court has ample powers under Order 16 Rule 14 CPC to summon any witness on its record but the said power is subject to certain limitations and said powers cannot be exercised in order to allow any of the parties to fill up the lacuna in the case.

11. The precedent relied upon by learned counsel for the

petitioners i.e. **R.M. Seshadri vs C. Vasantha Pai and others, 1969 AIR (SC) 692** and **P. Subrahmanyam Chetty vs Katari Ellappa Reddy 1988 Civil Court Cases 228 (AP)** are on some different background in which the Court can *suo motu* exercise such powers in respect of removing any ambiguity and allow the party to fill anything which remain obscure which could not be led at the relevant stage. The powers in question are akin to Order 18 Rule 17 CPC where the provision can be exercised at the instance of the Court itself. The primary consideration is that whether the Court considers such piece of evidence to be necessary for just decision of the case. The Court can summon the witness along with the record. The satisfaction of the Court is *sine qua non* for exercise of such powers.

12. In view of aforesaid, I deem it appropriate not to grant any indulgence at such a belated stage where the case is fixed for orders.

13. For the reasons recorded hereinabove, this revision petition is found to be totally devoid of merits and the same is accordingly, dismissed.

30.05.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No