

(118) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5162 of 2018

Date of decision: 30.08.2018

Panchayat Samiti, Dasuya and another

... Petitioners

Versus

Deepak Kumar and another

... Respondents

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

Present: Mr. Sunil Agnihotri, Advocate for the petitioners.

B.S. Walia, J. (Oral)

[1] Prayer in the Revision Petition is for setting aside order dated 08.02.2018 (Annexure P-5) passed by the learned Civil Judge (Jr. Div.), Dasuya dismissing the application filed by the petitioners for setting aside ex parte proceedings and for permitting the petitioners to participate in the proceedings.

[2] I have heard learned counsel and perused the paper book. A perusal of the impugned order dated 08.02.2018 (Annexure P5) reveals that the application was dismissed on the ground that neither date of ex parte order had been specified therein nor had it been mentioned as to on which date the applicants-defendants (i.e. petitioners herein) had gained knowledge of having been proceeded ex parte and as to how they had gained knowledge of the same, besides, there was no verification of the

application nor was any affidavit appended in support of the application. The applicants-defendants (i.e. petitioners herein) were proceeded against ex parte on 20.07.2017, whereas the application for setting aside ex parte proceedings, had been moved on 14.12.2017, besides, no record had been attached in support of the plea as to how the counsel was busy and could not come present in the case. Learned Civil Judge (Jr. Div.) dismissed the application on the ground that it was apparently a delay tactic of the applicants-defendants (i.e. petitioners herein) since directions had been issued to the petitioners to produce documents.

Despite query, learned counsel could not controvert the position as noted above. Accordingly, I am of the view that no case is made out warranting intervention with the impugned order passed by the learned Civil Judge (Jr. Div.), Dasuya dismissing the application filed by the petitioners for setting aside ex parte proceedings.

[3] Faced with the aforementioned position, learned counsel for the petitioners contended that even if sufficient cause was not established and the petitioners were consequently not permitted to appear in the proceedings with effect from the date of passing of ex parte order, at least they be allowed to participate in the proceedings with effect from the date they had put in appearance.

[4] As regards the plea for being allowed to participate in the proceedings with effect from the date petitioners had put in appearance, it needs mention that the apprehension is without any basis, as notwithstanding the dismissal of the claim for setting aside of ex parte order as also revision petition for setting aside of the impugned order, the petitioner's would be at liberty to participate in the proceedings in the

manner as laid down in the decision of Hon'ble the Supreme Court in

Om Parkash versus Amarjit Singh and another 1988 (3) Judgments

Today 72. Relevant extract of the same is reproduced as under :

“Dealing with Order IX rule 7 of the code, he said that if a party is allowed to appear then, unless good cause is shown under Order IX, rule 7 for the earlier non-appearance, the proceedings must continue from the stage at which the later appearance is entered, and the party so appearing cannot be relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings i.e. he has no right to set back the hands of the clock. All that it means is that he must accept at that has gone before and be content to proceed from the stage at which he has come in See also : *Arjun Singh v. Mohindra Kumar & Ors. (1964) 5 SCR 946*. In the present case, the appellant having failed to show good cause under Order IX rule 7 for the earlier non-appearance, the proceedings must continue from the stage at which the later appearance was entered and obviously, he could not be relegated to the position he would have occupied if he had appeared at the earlier hearing or hearings. But he certainly had the right of participation in the proceedings, to cross-examine the plaintiff or his witnesses and if necessary, to lead evidence in rebuttal. The failure of the learned Subordinate Judge to afford him an opportunity to do so virtually was tantamount to denial of justice.”

[5] Accordingly, Revision Petition is dismissed in the light of the observations as noted above.

(B.S. Walia)
Judge

30.08.2018
amit

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