

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

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CR No.5415 of 2018

Date of Decision:December 07,2018

Kasturi Lal and others

.....Petitioner(s)

versus

Vinay Kumar Mohindra and others

....Respondent(s)

CORAM: HON'BLE MR.JUSTICE RAJ MOHAN SINGH

Present: Mr. Deepak Goyal, Advocate for
Mr.Yogesh Goel, Advocate
for the petitioners.

Mr. Rajan Bansal, Advocate
for respondent No.1.

Mr. Viren Jain, Advocate
for respondents No.2 and 3.

RAJ MOHAN SINGH, J. (Oral)

The petitioners are defendants No.1 to 3. Vide order dated 03.01.2014 (Anneuxre P-2), they were proceeded against *ex parte*. The case was fixed for filing reply to the application for amendment of the plaint. In the subsequent orders, the reference of which finds mention in Para No.5 of the Revision Petition, presence of defendants No.1 to 3 was duly marked despite the order dated 03.01.2014. For

reference sake, Para No.5 of the Revision Petition is reproduced hereunder:-

*“..... That the counsel for the petitioners was regularly appearing on each and every date but he was not aware about the order dated 03.01.2014 and even thereafter on 16.07.2014, 19.07.2014, 05.08.2014, 02.09.2014, 15.09.2014, 17.10.2014, 12.11.2014, 15.12.2014, 22.01.2015, 20.02.2015, 30.03.2015, 29.04.2015, 15.05.2015, 27.05.2015, 16.07.2015, 01.08.2015, 19.08.2015, 10.09.2015, 08.10.2015, 06.11.2015, 16.11.2015, 10.12.2015, 27.01.2016, 17.02.2016, 31.03.2016, 30.04.2016, 08.07.2016, 11.07.2016, 18.07.2016 and 20.07.2016, 15.09.2016, 14.10.2016, 17.11.2016 and 25.11.2016, the counsel for the petitioners also appeared and his presence was marked but on 09.01.2016, the Ld. Trial Court noticed that on 03.01.2014 the petitioners were proceeded Ex.-parte and rectified the mistake by passing the impugned order dated 09.01.2017. The copy of the impugned order dated 09.01.2017 is annexed herewith as **Annexure P-3**”.*

2. On finding of aforesaid anomaly, the Court vide order dated 09.01.2017 rectified the mistake. At the time of passing of order dated 09.01.2017, the case was still at the stage of completion of pleadings. The case was adjourned for filing replication and for arguments on the said application. Issues were framed on 19.04.2017 and the case was adjourned on 14 occasions for plaintiff's evidence. Perusal of the interlocutory orders on record would show that the plaintiff has not lead any evidence even in the absence of defendants No.1 to 3 despite availing more than 14 opportunities. On 04.12.2017, the petitioners filed an application under Order 9 Rule 7 CPC for setting aside ex

parte proceedings dated 03.01.2014. Till date the plaintiff has not led any single evidence on record. In ***Bijay Kumar and others Vs. Shri Sanatan Dharam High School, Bhiwani, 2008(4) R.C.R.(Civil) 633***, this Court while relying upon ***Sangram Singh Vs. Election Tribunal Kotah and another, 1955 AIR(SC) 425***, held that the defendant can always join the proceedings from the stage at which they appear even though *ex parte* order had not been set aside.

3. It is settled principle of law on the strength of ***Modula India Vs. Kamakhya Singh Deo, 1988(2)R.C.R.(Rent) 530*** that the defendant is entitled to cross examine plaintiff witness and address arguments even if his defence was struck off. Cross examination would however be limited to point out false weakness of plaintiff's case. Defendant is entitled to demonstrate that the witness of the plaintiff is not speaking the truth and that the evidence put forth by the plaintiff is not sufficient to fulfil the requirement of law. The aforesaid analogy is a step ahead of present controversy involved in the present case wherein petitioner has challenged the order dated 03.01.2014 itself. Since they were marked present in subsequent proceedings on 35 occasions, therefore even if the order dated 09.01.2017 is passed, they are entitled to proceed from the stage from 03.01.2014 onwards.

4. Perusal of order dated 09.01.2017 would also show that no consequential order was recorded to the effect that the defendants No.1 to 3 would not be entitled for any benefit or would be debarred from taking part in subsequent proceedings in any manner. By looking

to the clear parameters, I deem it appropriate to set aside the order dated 03.01.2014 (Anneuxre P-2). The rigor of order dated 09.01.2017 would not come in the way of defendants No.1 to 3 in joining proceedings in accordance with law.

5. Disposed of.

December 07, 2018

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[RAJ MOHAN SINGH]

JUDGE

Whether speaking/reasoned :

Yes

Whether Reportable :

Yes/No