

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

CR No.6523 of 2018

Date of Decision : 29.11.2018

Ram Pal and others

...Petitioners

Versus

Dhan Singh Nawasa Likhi and another

....Respondents

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

Present: Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Tanmoy Gupta, Advocate for respondent No.1.

B.S.WALIA, J. (Oral)

1. Revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 14.07.2014, passed by the learned Civil Judge (Junior Division), Palwal (hereinafter referred to as 'the learned trial Court') dismissing the application filed by the petitioners-plaintiffs for restoration of the suit dismissed in default on 30.01.2012 and also for setting aside of judgment dated 02.07.2018, passed by the learned Addl. District Judge, Palwal (hereinafter referred to as 'the first lower Appellate Court').

2. Brief facts of the case leading to the filing of the instant revision petition are that the petitioners-plaintiffs had filed a civil suit bearing No.493 of 2007 against the respondents-defendants stating that they were owners in possession of agriculture land measuring 167 kanals 15 marlas situated in the revenue estate of village Kashipur, Tehsil and

District Palwal. Out of the said land, the respondents-defendants in respect of land in dispute measuring 12 kanals 8 marlas comprised in khasra No.8//12 (4-8), 19 (8-0), in collusion with the revenue officials prepared fard badar on 30.09.2006 and got revenue entries illegally recorded in their names. Despite best efforts by the petitioners-plaintiffs to get the illegal entries corrected and on failure thereof necessity to file suit for declaration and for permanent injunction arose, accordingly the suit was filed on 30.10.2007.

3. It transpires from the record that four opportunities were granted to the petitioners-plaintiffs for leading evidence prior to the passing of order dated 30.01.2012 on which date on account of absence of the petitioners-plaintiffs as well as no instructions pleaded by their counsel, the impugned order was passed dismissing the suit in default. An application (Annexure P-2) was filed under Order 9 Rule 9 CPC on 06.06.2012 i.e. after five months and close to one week after the passing of the impugned order without any application seeking condonation of delay on the ground that on the date of passing impugned order dated 30.01.2012, the petitioners-plaintiffs had intimated through counsel inability to appear in the Court on the date fixed, whereupon it was claimed by their counsel that he would communicate the next date of hearing in the suit to them but he did not communicate the next date of hearing and due to the aforementioned communication gap, the petitioner-plaintiff did not attend their case and also could not bring their evidence and it came to their knowledge only on 03.06.2012 that the suit was dismissed in default, whereupon, an application was filed for restoration of the suit. The said

application was dismissed by the learned trial Court on the ground that there was inordinate delay in filing the application and both the petitioners-plaintiffs as well as their counsel through whom the application for restoration of suit was filed remained quiet for long time besides the application was filed without any application seeking condonation of delay in late filing of the application for restoration of the suit. During the course of arguments learned counsel for the petitioner-plaintiffs has relied upon the decision of Hon'ble the Supreme Court in Malkiat Singh vs. Joginder Singh 1998 (1) RCR (Civil) 277, in which it was held that once a party engaged a counsel to defend the case and he reported no instructions then in that situation notice ought to have been issued to the concerned party. Relevant extract of the decision in Malkiat Singh's case (supra) is reproduced as under:-

4. We have heard learned counsel for the parties in this appeal and perused the record.

There is no denying the fact that the appellants had engaged a counsel to defend them in the civil suit. The counsel for the appellants pleaded "no instructions" but the court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions in the court. it is nobody's case that the counsel informed them after he had reported no instructions to the court. The appellants only came to know about the order dated 18.11.1991 and the ex-parte decree dated 8.2.1992 when they approached their counsel on 6.6.1992. It was within four days thereafter that the

appellants filed an application under Order 9, Rule 13, C.P.C. for setting aside the order dated 18.11.1991 and the decree dated .12.1992.

The appellants in their application clearly pleaded that they were neither careless nor negligent and as soon as they learnt about the ex-parte decree dated 8.2.1992 and the order dated 18.11.1991, they filed the application to set aside the order and ex-parte decree. A perusal of the record also reveals that the appellants were neither careless nor negligent in defending the suit. they had engaged a counsel and were following the proceedings. In this fact situation, the trial court, which had admittedly not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when t he counsel reported no instructions. The appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not suffer. In taking this view, we are fortified by a judgment of this Court in Tahlil Ram Issardas Sadarangani & Ors. Vs. Ramchand Issardas Sadarangani & Anr. (1993 (Supp.) 3 SCC 256) wherein the bench opined:-

"It is not disputed in the present case that on March 15, 1974 when Mr. Adhia, advocate withdrew from the case, the petitioners were not present in court. There is nothing on the

record to show as to whether the petitioners had the notice of the hearing of the case on that day. we are of the view, when Mr. Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer."

4. Per contra, learned counsel for the respondents contended that conduct of the petitioners-plaintiffs was such as did not establish sufficient cause for having failed to appear on the date when the impugned order was passed. Learned counsel further contended that the prayer for setting aside of impugned order had to be considered in the background of the fact that four opportunities had been granted to the petitioners-plaintiffs to lead evidence with 30.01.2012 being the 4th date on which the petitioners-plaintiffs allegedly intimated their counsel of their inability to be present in the Court and of the story of the petitioners-plaintiffs not establishing sufficient cause.

5. I have heard the submission of learned counsel for the parties.

6. A bare perusal of the record reveals that the petitioners-plaintiffs were negligent in as much as they did not bother to check the date and have only been mentioning in the application of communication gap on account of failure of the counsel to communicate the date. However, the fact remains that the responsibility to ascertain the next date of hearing was on the petitioners-plaintiffs especially in view of the fact that the

petitioners-plaintiffs were granted three opportunities to lead evidence and the case was adjourned to 30.01.2012 subject to last opportunity when the impugned order came to be passed. Further, in paragraph No.3 of the application, it was averred that the petitioners-plaintiffs were under the impression that their counsel had attended the case in the Court and since their counsel did not communicate the date of hearing, therefore, due to this communication gap, the petitioners-plaintiffs could not bring their evidence on 30.01.2012 and could not come present. The facts of the case as discussed above go to show beyond an iota of doubt that the petitioners-plaintiffs were casual in their approach and did not lead evidence despite having been granted numerous opportunities. Moreover, it was incumbent upon the petitioners-plaintiffs to have ascertained the date from their counsel but they choose not to ascertain the date and maintained a stoic silence till 03.06.2012 i.e. the date on which they came to know about the dismissal of the suit. Although absence of due diligence and negligence on the part of the petitioners-plaintiffs is apparent on the face of record, yet the only ground on which intervention is warranted is the failure of the learned trial Court to issue notice to the petitioners-plaintiffs on their counsel expressing no instructions.

7. Accordingly, in the light of the position as noted above, the revision petition is allowed, impugned order dated 14.07.2014, passed by the learned trial Court as also judgment dated 02.07.2018, passed by the learned first Appellate Court are set-aside, subject to payment of costs of ₹25,000/-. It is, however, made clear that since four opportunities have already been availed by the petitioners-plaintiffs for leading evidence but

they did not conclude the same, therefore, two effective opportunities for leading evidence, at own risk and responsibility, shall be granted to the petitioners-plaintiffs to conclude the entire evidence.

8. Parties through counsel are directed to put in appearance before the learned trial Court on 20.12.2018. Since the matter pertains to the year 2007, therefore, learned trial Court is requested to decide the civil suit, as expeditiously as possible, preferably within six months from the date of appearance of the parties.

9. Revision petition disposed of in aforementioned terms.

(B.S.WALIA)
JUDGE

29.11.2018
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No