

**3N THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.R. No.6839 of 2012 (O&M)

Date of Decision: February 17, 2018

Amit Kumar and another

...Petitioners

Versus

Rajni

..Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Namit Gautam, Advocate
for the petitioners.

Mr. Gaurav Rana, Advocate
for the respondent.

FATEH DEEP SINGH, J.

Through the instant revision petition by unsuccessful defendants, now petitioners-Amit Kumar and Kaushika who have impugned orders dated 16.8.2012 Annexure P/11 of the Court of learned Additional District Judge, Ludhiana as well as earlier orders dated 13.8.2008 of the Court of learned Civil Judge, (Junior Division), Ludhiana, thereby, dismissing the application filed for setting aside ex-parte order dated 03.09.2002 and its subsequent appeal too stood dismissed.

Heard, learned counsel for the parties and perused the records of the case. As is there and is even the own stand of the petitioners that they had been regularly appearing in the suit in question and it was on 03.09.2002 the defendants could not appear as they have forgotten the date

of hearing and had gone out of station to attend *bhog* ceremony of their relative. The Court below on the basis of application framed issues on 27.1.2004 and the applicant examined Parshotam Lal as AW1 and Raj Kumar, as AW. On the other hand, non-applicant examined Ram Sarup RW1 leading to passing of impugned order.

Heard. It is the own stand of the applicant/petitioners that the date fixed was 3.9.2002 when ex-parte orders were passed and the cause given was that they have forgotten the date as they had gone to attend the *bhog* ceremony of their relative and, thus, the onus lay upon them to establish that there was justifiable and bonafide cause of reasonable nature for setting aside such an order. It could not be displaced and is well writ large on the records that after 3.9.2002 the case was adjourned to 10.10.2002 and, thereafter, to 18.11.2002 from which it was adjourned to 20.12.2002. The present application has been filed on 29.11.2002 after more than 30 days. As is there and is in the arguments of the two sides neither any application for condonation of this delay nor any prayer was forthcoming much less any evidence to this effect as to the cause of delay in filing the application which needs to be filed within 30 days as per the Limitation Act. The earlier background also needs to be taken into account. The then plaintiff/Rajni now non-applicant had filed a suit regarding specific performance of agreement to sell dated 01.07.1995 against Nisha Rani deceased now being represented by her legal representatives and ex-parte judgment dated 12.1.1999 was passed for specific performance. It is thereafter defendant Nisha Rani filed application on 13.5.1999 for setting aside that judgment and decree and by another quirk of fate, decree holder

Rajni filed application on 31.1.999 and it is therein application for setting aside ex-parte judgment and decree dated 12.1.1999 was also moved on 13.5.1999 and which was dismissed in default on 3.9.2002 is in itself reflective of the conduct of the petitioner which throughout appears to be in a gross negligent and irresponsible manner leading to passing of ex-parte judgment and decree and, thereafter, not able to pursue the application and all these recourses to law are hopelessly beyond limitation. Though, this Court certainly deprecates the cryptic manner in which the learned Sub Judge has passed the order Annexure P/7 dismissing the application. However, the same has merged with the orders of learned Appellate Court Annexure P/11. . The Court below has well considered the evidence and has come to a justifiable conclusion that the applicant had been unable to justify the absence from proceedings nor could bring on record substantial documentary evidence to prove the reasons of being absent. It is well settled law that a party who seeks setting aside of such an order is supposed to show sufficient/adequate reasons to brush aside any such misgiving and put forth their cause that they were not acting in negligent manner or there was want of bonafide on their part. From the conduct of the petitioners it appears that they were not diligent enough to pursue the matter rather have been dillydallying the same for a motivated cause. The Court in its finding Annexure P/11 have well considered the reasons necessitating upholding of the order and was primarily with the object to dilly dally the proceedings which were being carried on against them.

In the light of what has been detailed and discussed above, there is no illegality or perversity in the findings of the Court below

which could necessitate intervention by this Court. Thus, upholding the same, the revision petition being devoid of any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 17, 2018

aarti

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