

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

**CR No.809 of 2015**

**Date of decision:21.03.2018**

M/s Free India Rice Mills, Tarn Taran Road,  
Amritsar and others

... Petitioners

Vs.

Food Corporation of India

... Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Dheeraj Mahajan, Advocate  
for the petitioners.

Mr. Ish Puneet Singh, Advocate  
for the respondent.

**AMIT RAWAL J.**

The petitioner-defendants are in revision petition against the order dated 17.09.2014 (Annexure P-2) rendered by the Additional District Judge (Adhoc) Fast Track Court, Amritsar dismissing the appeal against the order dated 09.08.2012 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Amritsar, dismissing application filed under Order 9 Rule 13 of Code of Civil Procedure for setting aside the ex parte judgment and decree dated 19.11.2005 (Annexure P-6).

The facts emanating from the revision petition are, that the respondent-plaintiff/Food Corporation of India instituted a suit for recovery of ₹4,61,849 on the basis of certain transaction. In pursuance to the notice served upon the defendants, written statement was filed, by raising the

various preliminary objections. However, both the parties cross-examined the witnesses and evidence of the petitioner-defendants was closed and on 17.11.2005 counsel for the petitioner-defendants pleaded no instruction, thereafter, they were proceeded against ex parte. In view thereof, ex parte judgment and decree dated 19.11.2005 (Annexure P-6) was passed. On realizing the aforementioned fact, the petitioner-defendants moved an application dated 01.12.2005 under Order 9 Rule 13 CPC stating therein that wedding of daughter of the defendants was fixed for 20.11.2005 and after completion of the marriage, contacted their previous counsel on 21.11.2005. It is in that background, the application was submitted on 01.12.2005.

Mr. Dheeraj Mahajan, learned counsel for the petitioner-defendants submitted that alongwith application a wedding card (Annexure P-7) revealing the marriage fixed for 20.11.2005 was enclosed. The counsel should not have pleaded no instructions on 17.11.2005 as the Court was required to send notice to the defendants in view of the law laid down by the Hon'ble Supreme Court in **Tahil Ram Vs. Ramchand 1993 AIR SC 1182** and **Malkiat Singh Vs. Joginder Singh 1998 (1) RCR (Civil) 277**, therefore, no fault can be attributed to the petitioner-defendants for not having led any evidence. It was a case where the petitioner-defendants had almost led the evidence but counsel did not examine any other witness. Even otherwise focus of the petitioners was on the preparation of the wedding which was on the anvil. All these factors have

not been considered by the Court below in correct perspective resulting into illegality and perversity in dismissing the application and thus, urged this Court for setting aside the ex parte judgment and decree subject to any terms and conditions this Court deem fit.

Mr. Ish Puneet Singh, learned counsel for the respondent-plaintiff submitted that approach of the petitioner-defendants had not been serious and diligent, for, despite having been availed the numerous opportunities as indicated in the judgment and decree, for, their evidence was closed by the Court and thereafter, the petitioner-defendants approached this Court by filing a revision petition, whereby opportunity was granted but despite that no evidence was led and urged this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr. Dheeraj Mahajan, Advocate.

The wedding card reflecting the marriage of defendants' daughter on 20.11.2005 had not been controverted, much less pleading no instructions on 17.11.2005. Non-absence of counsel or pleading no instructions had been a point of consideration before various Courts and ultimately the Supreme Court of India in the judgments cited (supra) held that where the counsel made a statement of pleading no instructions, notice is required to be sent to the party concerned. Para 4 of the judgment rendered in Malkiat Singh's case (supra) reads 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 8.12.1992.

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 the 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 Tahil 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."

Similar was the view in the judgment rendered in Tahil Ram's case (supra). Paragraph 4 of the same also reads as under:-

*"4. 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. Adia 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.”*

However, on the other hand, Mr. Ish Puneet Singh, Advocate relied upon the judgment rendered by this Court in **Jagdeep Kaur Vs. Manohar Singh 2012(3) PLR 743** to contend that it is not the duty of the Court to send notice to the party in case counsel pleads no instructions, that too after seeking many adjournments for filing the written statement.

From the contents of the judgment relied upon by Mr. Ish Puneet Singh, it revealed that it was a case where the Court noticed the intentional default on the part of the lawyer in delaying the adjudication of the suit for not filing the written statement. However, as per the facts noticed above, the case in hand is not such kind of nature but it was on account of non-instructions from the client where suit was slated for petitioner-defendants' evidence. Obviously had the counsel brought to the notice of the Court regarding wedding of defendants' daughter on 20.11.2005, the Court could have also adopted a reasonable approach in adjourning the matter which would not have resulted into passing of the ex

parte judgment and decree, though the suit was quite old.

Be that as it may, I am of the view that defendants did not cause any delay in moving the application. The same was filed within few days, i.e., on 01.12.2005 which falls within the expression "*promptitude*". Even the respondent-plaintiff should not have contested the application which has resulted into wastage of almost 9 years.

For the reasons aforementioned, I am of the view that the orders under challenge are not sustainable in the eyes of law and the same are hereby set aside. The application filed under Order 9 Rule 13 CPC is allowed subject to costs of ₹5000/-. However, the petitioners are granted one opportunity to tender the documents in support of the evidence within time granted by the trial Court.

Revision petition stands allowed.

(AMIT RAWAL)  
JUDGE

March 21, 2018  
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No