

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

CR No.7986 of 2018
Date of Decision : 27.11.2018

Bikramjit Singh and others

...Petitioners

VERSUS

Kuldeep Kaur and others

....Respondent

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

Present: Mr. Amit Arora, Advocate
for the petitioners.

B.S.WALIA, J. (Oral)

1. Challenge in this revision petition under Article 227 of the Constitution of India is to order dated 10.09.2018 (Annexure P-6) wrongly written as 27.09.2018, passed by the learned Civil Judge (Junior Division), Tarn Taran, dismissing the application filed by the petitioners-defendants for setting aside ex parte order dated 04.01.2018.

2. In view of the nature of order proposed to be passed, I do not deem it necessary to issue notice to the respondents, as the same would entail delay of conclusion of proceedings as also incurring of expenditure by the respondents.

3. Brief facts of the case leading to the filing of the revision petition are that the petitioners-defendants were proceeded ex parte on 04.01.2018 despite having filed written statement and being represented through counsel. However, application for setting aside of ex parte order

dated 04.01.2018, was filed only on 21.08.2018. The same was dismissed vide order dated 10.09.2018 on the ground that sufficient cause had not been shown especially in the background of the application for setting aside ex parte order dated 04.01.2018 having been moved after more than eight months and that too despite having filed written statement and being represented through counsel in the suit.

4. Learned counsel for the petitioners has not been able to point out any defect in the impugned order with regard to there being any sufficient cause for setting aside of the impugned order. Accordingly, I find no merit in the revision petition. Faced with the aforementioned position learned counsel contended that, in the circumstances, the petitioners be permitted to participate in the proceedings from the date of filing the application i.e. 21.08.2018.

5. In view of the apprehension expressed by learned counsel for the petitioner, it is clarified that notwithstanding the dismissal of the revision petition for setting aside of the impugned order, the petitioner 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.”

6. Accordingly, the Revision Petition is dismissed in limine in the light of the observations as noted above.

(B.S.WALIA)
JUDGE

27.11.2018
rajesh.k.khurana

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