

(112) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.14380 of 2018

Date of decision : 21.12.2018

Vijay Kumar and another

... Petitioners

Versus

Oriental Bank of Commerce and another

.... Respondents

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

Present : Mr. Parmod Parmar, Advocate for the petitioners.

B.S. WALIA, J. (ORAL)

[1] Revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 11.10.2018 (Annexure P-1) passed by the Court of the learned Civil Judge (Jr. Div.), Rohtak dismissing application for providing opportunity to file written statement etc.

[2] Brief facts of the case leading to the filing of the Revision Petition are that vide order dated 19.09.2018 (Annexure P-3), Civil Revision No.6224 of 2018 filed by the petitioners was disposed of by granting liberty to the petitioners to avail appropriate remedy before the Court of the learned Civil Judge (Jr. Div.), Rohtak in view of the plea that the petitioners had paid a sum of Rs.4000/- to the counsel representing them before the learned trial Court for payment of costs and had also handed over documents to him for filing of written statement and were assured by him that the needful would be done but neither the costs were paid nor was the written statement filed, therefore, in the circumstances, the petitioners could not be prejudiced.

This Court had also taken into account the statement of learned counsel for the petitioners that the petitioners were in the process of taking appropriate action against the counsel representing them who had misled them before the learned trial Court. In the circumstances, the petitioners were granted liberty to move appropriate application before the learned Civil Judge (Jr. Div.), Rohtak for modification/recall of order as well as extension of time in view of decision of Hon'ble the Supreme Court in **Saleem Advocate Bar Association, Tamil Nadu v. Union of India, AIR 2005 SC 3353** as well as decision of this Court in **Municipal Committee, Kharkhoda v. Bhim Singh, 1987 (1) RCR (Rent) 442**.

[3] Pursuant to the order of this Court dated 19.09.2018 (Annexure P-3), the petitioners moved application, relevant extract of which is reproduced as under:-

“The application in hand has been moved in pursuance of order dated 19.09.2018 passed by the Hon'ble High Court in CR No.6224 of 2018, whereby the defendant No.1 was relegated to avail appropriate remedy before the Civil Court on payment of cost of Rs.5,000/- with High Court Legal Services Committee. It has been averred in the application that defendant No.1 and 2 was proceeded against ex parte and they moved an application for setting aside the ex parte order which was allowed by the Court on 04.01.2018. Only one opportunity for filing the written statement and this fact was not disclosed to the applicants. Their counsel did not file the written statement and subsequently, the defence was struck off vide order dated 19.09.2018. Evidence of witnesses on behalf of the plaintiff were examined at the time when the defendant No.1 & 2 were proceeded against ex parte and therefore, this

application in hand has been filed for providing an opportunity to file written statement and lead evidence.”

[4] A perusal thereof reveals that a totally contradictory stand to what was projected before the High Court has been taken in the application. Earlier the petitioners had been proceeded ex parte vide order dated 27.05.2016 and the application for setting aside of the ex parte order, was allowed vide order dated 04.01.2018 subject to payment of costs of Rs.4,000/- with clear instructions to defendant Nos.1 and 2 that only one opportunity would be granted to them to file written statement. However, on the next date of hearing, neither costs were paid nor was the written statement filed. Before this Court, the stand was that the petitioners had paid a sum of Rs.4000/- to the counsel representing them before the learned trial Court and documents had also been handed over to the counsel for filing of the written statement and the petitioners were assured that needful would be done but neither the costs were paid nor was the written statement filed. It was by taking into account the aforementioned stand of the petitioners as well as the decision of Hon'ble the Supreme Court in Saleem Advocate Bar Association's case (Supra) as well as Municipal Committee, Kharkhoda's case (Supra) that this Court had granted liberty to the petitioners to move appropriate application before the Court of learned Civil Judge (Jr. Div.), Rohtak. However, a perusal of the application filed by the petitioners pursuant to order of this Court reveals a totally contradictory stand inasmuch as in the application it has nowhere been alleged that a sum of Rs.4000/- was paid to the counsel and documents were also handed over to him and that the counsel had assured them that the needful would be done. Instead in the application it has been mentioned that the counsel did not disclose to the

petitioners that only one opportunity to file written statement had been granted. The stand as was projected before this Court was never brought to the notice of the learned trial Court in the application moved before it. The learned trial Court by taking into account that the petitioner/defendant Nos.1 and 2 were taking the entire Court proceedings casually with the intention to delay the proceedings in the case as also in view of the evidence of the respondents/plaintiffs having been closed, dismissed the application.

[5] Learned counsel for the petitioners has not been able to show from the application filed before the learned trial Court that the case as projected before this Court leading to passing of order dated 19.09.2018 (Annexure P-3) was brought to the notice of the learned trial Court.

[6] In the light of the position as noted above, I find no reason to interfere with the order dated 11.10.2018 (Annexure P-1) passed by the Court of the learned Civil Judge (Jr. Div.), Rohtak. Accordingly, the Revision petition is dismissed in limine.

(B.S. Walia)
Judge

21.12.2018
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| 1. Whether speaking/reasoned | : | Yes/No. |
| 2. Whether reportable | : | Yes/No. |