

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

**CR No.4691 of 2018(O&M)
Date of Decision-21.02.2019**

Paramjit Singh and another ... Petitioners

Versus

Binder Kumar and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ishwar Lal, Advocate for the petitioners.

Mr. Surinder Sharma, Advocate for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 07.10.2015 passed by Civil Judge (Junior Division), Jalandhar vide which application for setting aside the *ex parte* order dated 18.05.2015 and application dated 21.03.2011 for staying the suit till final decision of CWP No.9101 of 1990 were dismissed.

[2]. Petitioners were proceeded against *ex parte* on 18.05.2015. Perusal of the record would show that defendants No.1 to 3 appeared in the suit on 15.05.2010, but no written statement was filed. On 07.09.2013, they were proceeded against *ex parte*, however vide order dated 05.02.2014, *ex parte* proceedings were set aside.

[3]. Application for rejection of plaint filed by the petitioners was rejected and thereafter, the case was adjourned to

13.02.2014 for filing written statement. On 18.05.2015, the petitioners were again absent and accordingly, they were again proceeded against ex parte. An application was filed for setting aside the *ex parte* proceedings on 25.09.2015 and the same was dismissed vide the impugned order dated 07.10.2015. The case was adjourned for evidence of the plaintiff. Petitioners had joined the proceedings and they were held entitled to cross-examine the witnesses of the plaintiff.

[4]. Perusal of the record would show that petitioners had already filed application dated 21.03.2011 for staying the proceedings of the suit on the ground of pendency of civil writ petition in the High Court. Till date, written statement has not been filed by the petitioners.

[5]. Perusal of the record would further show that after order dated 05.02.2014 i.e. when the *ex parte* proceedings dated 07.09.2013 were set aside, the case was fixed for filing written statement on behalf of the petitioners. On 20.02.2014, following order was passed:-

“Present: Sh. Parveen Kumar, counsel for plaintiff.

Defendant Nos.1 to 3 ex parte.

GP for defendant Nos.4 to 6.

Today the case was fixed for filing written statement on behalf of defendant Nos.1 and 3. Learned counsel for the defendant have however averred that an application dated 21.03.2011 filed before the learned

predecessor Court for staying the proceedings of the instant case till the decision of Civil Misc. Writ Petition No.9101/1990 titled Maharaja Sukhjit Singh Vs. Union of India pending disposal. It has been averred that the defendant draw their title from the applicant in the said writ petition and hence unless the said writ petition is decided, the proper adjudication qua instant suit cannot be arrived at. Perusal of the file reveals that said application dated 21.03.2011 has not yet been decided. To come up on 18.03.2014 for reply and consideration to the said application.

*(Gursher Singh)
CJJD/20.02.2014”*

[6]. Perusal of the aforesaid order would show that petitioners/defendants No.2 and 3 were shown to be *ex parte* despite the fact that *ex parte* proceedings have already been set aside on 05.02.2014. The application dated 21.03.2011 for staying the proceedings of the suit till decision of CWP No.9101 of 1990 was pending. The case was adjourned to 18.03.2014 for reply and consideration on the said application.

[7]. On 18.03.2014, again petitioners/defendants No.2 and 3 were shown *ex parte* and the case was adjourned to 24.03.2014. In due course, the case was further adjourned to 03.09.2014, 29.10.2014, 13.01.2015, 16.03.2015, 30.04.2015 and 18.05.2015 for arguments on stay application. In all the aforesaid orders, petitioners/defendants No.2 and 3 were shown to be *ex parte* in the memo of the parties. On 18.05.2015,

though the petitioners were shown to be *ex parte* in the presence memo of parties, but they were again proceeded against *ex parte* vide the said order. Order dated 18.05.2015 reads as under:-

*“Present: Sh. Parveen Kumar, counsel for the plaintiff.
Defendant No.1 to 3 ex parte.
GP for defendant No.4 to 6.*

Perusal of record reveals that the ex parte proceedings against defendant No.1 to 3 were set aside by my Ld. Predecessor Court on 05.02.2014. Thereafter, defendant No.1 and 3 appeared on 13.02.2014 but they failed to file any written statement. However, they have never been again proceeded against ex parte vide any order. As such, in order to remove any discrepancy, the defendants No.1 to 3 are hereby proceeded against ex parte. Previous zimni order stands rectified to that extent. Now to come up on 02.07.2015 for evidence of plaintiffs.

*(Amardeep Singh)
CJJD/18.05.2015”*

[8]. The application dated 25.09.2015 filed for setting aside the order dated 18.05.2015 was dismissed after recording the factum of earlier order dated 07.09.2013 when the petitioners were proceeded against *ex parte* for the first time and the *ex parte* proceedings were set aside on 05.02.2014 and the case was adjourned to 13.02.2014 for filing written statement.

[9]. It appears from the record that from 20.02.2014 till 18.05.2015, dual proceedings were pending. On the one hand,

arguments were not made on the application dated 21.03.2011 for staying the proceedings of the suit till decision of CWP No.9101 of 1990 and on the other hand, in the main suit, written statement was not being filed. Orders from 20.02.2014 till 30.04.2015 indicated that the case was being adjourned only on the stay application and the petitioners/defendants No.2 and 3 were shown *ex parte* therein. It was only in the order dated 18.05.2015, the factum of non-filing of written statement was noticed and earlier *zimni* orders were rectified, wherein defendants No.1 to 3 were shown to be *ex parte*.

[10]. Owing to the conduct of the petitioners/defendants No.2 and 3, they were again proceeded against *ex parte* and the application dated 25.09.2015 was held to be belatedly filed for which no explanation was given. Though as per facts born on record, the conduct of the petitioners is lethargic, but the fact remains that they were wrongly shown to be *ex parte* from 20.02.2014 to 18.05.2015 and the error was only rectified in the order dated 18.05.2015. There was no reference of non-filing of written statement in the orders dated 20.02.2014, 18.03.2014, 08.07.2014, 03.09.2014, 29.10.2014, 13.01.2015, 16.03.2015 and 30.04.2015, but the reference was made that the case was being adjourned for arguments on the stay application dated 21.03.2011. Petitioners have already been allowed to join the proceedings and liberty was also given to them to cross-examine the plaintiff witnesses. The said liberty has already been availed

by the petitioners and the evidence of the plaintiff is still in progress.

[11]. In view of facts and circumstances of the case on record, I deem it appropriate to grant one opportunity to the petitioners to file written statement subject to payment of costs of Rs.25,000/- to be paid to the plaintiff. However, the petitioners will not be entitled to summon any already examined witness of the plaintiff for further cross-examination. Trial Court shall fix a date for filing written statement by the petitioners/defendants No.2 and 3. Payment of costs shall be the condition precedent for granting aforesaid indulgence by the trial Court.

[12]. Disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

21.02.2019
Prince

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