

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 110

Case No. : C. R. No. 5867 of 2018 (O&M)

Date of Decision : February 20, 2019

Punjab Agro Food Grain Corporation Ltd.
and another Petitioners

vs.

M/s Swaraj Commission Agent Grain
Market (Mandi), Village Ghuman and
another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Dilraj Singh Bhinder, Advocate
for the petitioners.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 29.09.2017 passed by the Civil Judge (Junior Division), Batala (for short – the Trial Court) dismissing the petitioners' application filed under Order 9 Rule 13 CPC, through which the petitioners had sought setting aside of the ex-parte judgment and decree dated 18.11.2013. Also under challenge is the order dated 04.05.2018 passed by the Additional District Judge, Gurdaspur (for short – the Appellate Court), through which the petitioners' appeal, filed by them against the afore-referred order of the Trial Court dated 29.09.2017, has been dismissed.

The facts, in brief, which would be required to be noticed for

adjudicating upon the present petition, are that on 12.06.2009, respondent

no. 1 filed a suit against the petitioners as also one of its employees seeking therein recovery of Rs.1,05,311/-.

On being put to notice, the petitioners, who were defendants in the suit, appeared before the Trial Court and filed their written statement. After framing of issues by the Trial Court, only respondent no. 1 led its evidence as the petitioners, at the stage of leading their evidence, failed to appear before the Trial Court and were thus proceeded against ex-parte. On the basis of evidence led by respondent no. 1, the Trial Court decreed the suit through ex-parte judgment and decree dated 18.11.2013.

On 08.07.2015, the petitioners filed an application under Order 9 Rule 13 CPC seeking therein to set aside the aforesaid judgment and decree dated 18.11.2013 passed by the Trial Court. Such application was dismissed by the Trial Court through its order dated 29.09.2017. The petitioners' appeal against the afore-referred order dated 29.09.2017 was also dismissed by the Appellate Court through its order dated 04.05.2018.

Learned counsel for the petitioners has been heard.

On 12.06.2009, respondent no. 1 filed a recovery suit against the petitioners through which recovery of Rs.1,05,311/- was sought. On being put to notice, the petitioners appeared before the Trial Court and took part in the proceedings for over four years. However, at the stage when they were to lead their evidence, they absented themselves leading to the passing of ex-parte judgment and decree dated 18.11.2013. The petitioners filed the application under Order 9 Rule 13 CPC only on 08.07.2015. For 1½ years, they did not bother to find out with regard to the proceedings in the suit or

its outcome, the pendency of which they were certainly aware of. For such negligence on the part of the petitioners, it is only they who should suffer.

The stand taken by the petitioners before the Trial Court that the ex-parte judgment and decree dated 18.11.2013 was passed against them as their counsel had shifted his practice from Batala to the High Court at Chandigarh without any intimation to them, has concurrently been rejected by the Trial Court as also the Appellate Court for the reason that respondent no. 1 had proved the fact that the petitioners' counsel engaged by them had been appearing before the Courts at Batala till as late as July 2016. Nothing has been shown to persuade this Court to take a different view.

In view of the above, the concurrent findings of fact arrived at by both the Trial Court as also the Appellate Court do not warrant any interference.

Dismissed.

(DEEPAK SIBAL)
JUDGE

February 20, 2019
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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>