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

CR-8006-2016 (O&M)

Date of decision : 09.04.2019

Shyam Sunder and others

... Petitioners

Versus

Satpal Goyal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Adarsh Jain, Advocate
for the petitioners.

Mr. Aditya Jain, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 10.11.2006, whereby the application of the petitioner for setting aside the ex parte order dated 07.08.2014, has been dismissed.

The adequacy of the arguments has already been noticed by this Court in the notice of motion order dated 28.11.2016, which reads as under:-

"Learned counsel for the petitioners contends that the petitioners/defendant Nos.1 to 3 were served in the main suit and they even filed written statement taking plea of family settlement dated 20.05.1989 vide which house and two shops were partitioned between the parties by mutual consent and the same was recited on a stamp paper as well. The record of the trial Court was summoned by the lower Appellate Court in a misc. appeal arising out of injunction proceedings. Appeal was

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dismissed only on 05.02.2014 and thereafter defendants/ petitioners were proceeded against ex parte on 07.08.2014. Learned counsel submits that for setting aside the ex parte order, only a good cause has to be appreciated as against sufficient cause which is required for setting aside the ex parte decree. Even though there was some omission on the part of the defendants, the same could have been compensated by way of payment of adequate cost.

Notice of motion for 23.01.2017 to respondent Nos.1 to 3 only. In the meanwhile, passing of final order by the trial Court shall remain stayed."

The facts, aforementioned, according to Mr. Adarsh Jain, learned counsel for the petitioners, are the matter of record.

Mr. Adarsh Jain, learned counsel appearing on behalf of the petitioners submitted that the petitioners-defendants submitted an application on 24.07.2015 (Annexure P-6) as acquisition of the knowledge reflection therein was on 21.07.2015, when defendant No.1 came to the Court for his personal case and by chance, saw the cause list outside the Court and found that the case for *ex parte* arguments, was pending, on the same date. The absence was neither intentional nor willful. The alleged delay attributed to the plaintiffs was also not intentional. The defendants did not deny the listing of the matter on 21.07.2015.

Mr. Aditya Jain, learned counsel appearing on behalf of the respondent No.1-plaintiff submitted that the entire *ex parte* evidence led by the plaintiff, the defendants did not come forward and final arguments were also heard and the matter was adjourned to 21.07.2015, for orders. The order could have been pronounced, but the Presiding Officer was on leave and the matter was adjourned to 03.08.2015. The application was highly

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belated and lacked *bona fides*, thus, urges this Court for dismissal of the present revision petition by affirming the impugned order, under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the impugned order, under challenge, is not sustainable in the eyes of law for the simple reason that the Court below should not have adopted hyper-technical approach as the whole purpose in the suit is to contest on merits. It is not a case, where the petitioners never appeared and explained their predicament as the main file was requisitioned by the lower Appellate Court in the pending miscellaneous appeal, preferred against the order deciding the injunction application. It was only return back in the month of February 2014. The parties were not aware of the proceedings. At the best, the Court below should have imposed certain costs.

Keeping in view the aforesaid facts, the impugned order, under challenge, is hereby set aside and the application seeking setting aside the *ex parte* order is allowed, subject to the costs of ₹7,000/-, which shall be condition precedent.

With the aforesaid observations, the present revision petition stands disposed of.

09.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**