

**CR No. 3464 of 2019 (O&M)**

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

**CR No. 3464 of 2019 (O&M)**

**Date of Decision: May 30, 2019**

**M/s. Punjab Agro Food Grain Corporation Ltd. and another**

..... Petitioner(s)

**Versus**

**M/s. Sardar Commission Agent, Grain Market (Mandi), Village Ghoman  
and another**

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. D.S. Bhinder, Advocate  
for the petitioners.

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**LISA GILL, J.(oral)**

This revision petition has been filed by the petitioners M/s. Punjab Agro Food Grain Corporation Ltd. being aggrieved of the dismissal of their application under Order 9 Rule 13 of CPC, vide order dated 17.04.2017, passed by the learned Civil Judge (Jr. Division), Batala as well as order dated 04.12.2018, passed by the learned Additional District Judge, Gurdaspur.

Brief facts necessary for the adjudication of the case are that the respondents-plaintiffs filed a suit for recovery against present petitioners/defendants for a sum of Rs.44,758/- along with interest @ 12% per annum. The said suit was filed on 11.06.2009. Present petitioners/defendants in the suit were represented by their counsel namely Mr. Inderjit Sharma, Advocate, who appeared on 07.09.2009. Written statement was filed and the matter was contested right till 05.09.2013. However, none appeared on behalf

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of the petitioners/defendants on 17.09.2013 and they were thereafter proceeded against *ex-parte*. Judgment and decree dated 05.10.2013 was passed in favour of the respondents/plaintiffs for recovery of Rs.45,998/- alongwith interest. An application for setting aside the said *ex-parte* decree was filed on 26.11.2014 with a plea that the petitioners/defendants came to know about the passing of the *ex-parte* decree only when they were served in the execution proceedings. It is pleaded that the counsel had been duly engaged to defend the petitioners but the said counsel, however, shifted to Chandigarh from Gurdaspur and did not inform the petitioners regarding the proceedings in the civil suit neither they were ever informed about the *ex-parte* judgment and decree dated 05.10.2013.

The present petitioners, it is claimed, would suffer irreparable loss and injury due to the negligence of their counsel. Therefore, it is prayed that the *ex-parte* judgment and decree be set aside.

Learned Civil Judge (Jr. Division), Batala vide order dated 17.04.2017 dismissed the application while observing that the petitioners could not prove that the counsel had shifted to Chandigarh and was no longer practising in the Courts at Gurdaspur. It is observed that the evidence led by the petitioners do not prove the stand taken by them. Appeal filed by the present petitioners was also dismissed by the learned Additional District Judge, Gurdaspur. Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioners/defendants has vehemently argued that the present petitioners should not suffer due to the fault of their counsel and they should not be condemned unheard. It is further submitted that

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the evidence led by the petitioners has been misread, in as-much-as, it is proved on record that their counsel Mr. Inderjit Sharma, Advocate had shifted to Chandigarh from Gurdaspur. It is, thus, prayed that this petition be allowed.

I have heard learned counsel for the parties and have gone through the file.

It is not in dispute that the petitioners were represented by a counsel before the learned trial Court. Written statement was filed on their behalf. They were represented from 07.09.2009 till 05.09.2013 before the learned trial Court. The *ex-parte* judgment and decree against them was passed on 05.10.2013 for recovery of a sum of Rs.45.998/- alongwith interest. Copy thereof is, however, not on record. The application for setting aside the *ex-parte* judgment and decree was filed after passing of almost one year on 26.11.2014.

The case set up by the petitioners is demolished by their own witnesses. The petitioners have failed to prove that their advocate completely left practice at the Courts at Gurdaspur or Batala and shifted to Chandigarh. It is admitted that the said counsel is still on the panel of lawyers representing the petitioners. AW-1 Sukhminderjit Singh, District Manager has specifically admitted that Mr. Inderjit Sharma, Advocate is still appearing in the Courts at Gurdaspur, though, it is stated that Mr. Inderjit Sharma, Advocate is appearing in the said Courts for one or two days in a week. AW-1 further stated that a clerk from their office is always deputed to pursue their cases. The concerned clerk always remains in touch with the

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proceedings of the Court. He has expressed ignorance as to whether any departmental proceedings were initiated against the concerned employee in the present matter.

AW-2 Kashmir Singh Bagga, Inspector (retired) on the other hand contradicted the stand taken by Sukhminderjit Singh (AW-1), by saying that no official of the present petitioners was deputed to pursue the proceedings before the learned Civil Court and all the proceedings were being looked-after solely by their advocate. AW-1 has, never-the-less, admitted that their advocate was still working at the District Courts, Gurdaspur, though, he was also maintaining his office at Chandigarh. The petitioners were informed about the proceedings by their counsel and he is still on the panel of their advocates.

Both the learned Courts below in the given facts and circumstances have rightly dismissed the application under Order 9 Rule 13 C.P.C. There is no ground what-so-ever to interfere in the impugned decisions. It is, needless to say, open to the petitioners to take action against the concerned employee who might have been negligent in the discharge of his duties.

Accordingly, the petition is dismissed.

**May 30, 2019**

Sunil

**(Lisa Gill)**  
**Judge**

Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/No