

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 120

Case No. : C. R. No. 2360 of 2019 (O&M)

Date of Decision : April 08, 2019

Johan @ Billu and others		Petitioners
vs.		
Herald Vincent Samson		Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioners.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 11.02.2019 passed by the Civil Judge (Junior Division), Batala (for short – the Trial Court), through which an application filed by the petitioners to set aside the ex-parte proceedings has been dismissed.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein possession of the property detailed and described by him in the plaint (for short – the suit property).

On being put to notice, the petitioners, who were the defendants in the suit, appeared before the Trial Court and filed an application under Order 11 Rule 1 CPC seeking to serve interrogatories upon the respondent. While such application was pending, none appeared

on behalf of the petitioners before the Trial Court on 21.09.2018, 16.10.2018 as also 03.11.2018 resulting in the passing of the order, through which they were ordered to be proceeded against ex-parte. On 17.11.2018, the petitioners filed an application seeking setting aside of the order passed by the Trial Court through which they had been proceeded against ex-parte on the ground that they had noted a wrong date. Against the dismissal of such application, the present petition has been filed.

Learned counsel for the petitioners submits that though the presence of the petitioners is not reflected in the order dated 16.10.2018, they were in fact present in the Court and had inadvertently noted the next date of hearing to be 16.11.2018. It is further submitted that subject to assessment of reasonable costs, the petitioners be allowed to join the proceedings and be not penalized for a bona fide error on their part.

After hearing learned counsel for the petitioners and perusing the record of the case, it is found that the impugned order through which the petitioners have been ordered to be proceeded against ex-parte, was passed on 03.11.2018 and within a fortnight thereafter i.e. on 17.11.2018, the petitioners had filed an application seeking setting aside of the ex-parte proceedings against them. That being so, by taking a lenient view in the matter as also for the reason that the petitioners may get an opportunity to defend the suit filed against them and contest the same on merits, subject to payment of Rs.5,000/- as costs to be borne by each of the petitioners and to be paid to the respondent, the impugned order is set aside and the petitioners are allowed to join the proceedings from the stage from where

they were proceeded against ex-parte.

The Trial Court shall ensure that the costs ordered to be paid by the petitioners to the respondent are transferred to the bank account of the respondent.

The petition is allowed in the above terms.

If the respondent is aggrieved by passing of the present order, he is at liberty to approach this Court by filing of an appropriate application.

(DEEPAK SIBAL)

JUDGE

April 08, 2019

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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>