

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

CR- 4980 - 2019

Date of Decision: 09.01.2020

Rama Industrial Limited

...Petitioner

Versus

Mahalaxmi Chemicals, Bareilly

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rahul Sharma-I, Advocate
for the petitioner.

Mr. Pritam Singh Saini, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Petitioner has filed the present revision petition against orders passed by the trial Court dismissing application under Order 9 Rule 13 CPC refusing to set aside *ex parte* decree passed by Civil Court at Dera Bassi. The aforesaid orders passed by the trial Court has also been upheld in appeal by the Learned Additional District Judge, SAS Nagar, Mohali. The suit filed by the respondent for recovery of Rs. 8,90,130/- was pending in the Civil Court at Rajpura. On 18.02.2008, following order was passed:

18.02.08 (II)

“Present:- Counsel for the parties

*Present case is adjourned to 08.04.2008 for
consideration on application u/s 22 of S. I.
Act.*

*CJ(JD) Rajpura
18.02.2008*

On the next date of hearing, the case was taken up by the Additional Civil Judge (Sr. Divn.), Darabassi and not in the Courts at Rajpura. The orders passed by the Court on 08.04.2008, 07.08.2008 and 05.02.2009 are extracted as under:

(III) “Present:- Counsel for the parties

This case received by way of transfer from Rajpura to this newly established Court at Derabassi. It is registered on request adjourned to 07.08.2008 for consideration on the application u/s 22 of the S.I. Act.

*ACJ (SD) Derabassi
08.04.2008.*

07.08.08 (IV) “Present:Counsel for the parties;

On the request the case is adjourned to 05.02.2009 for consideration.

*ACJ (SD) Derabassi
07.8.2008.*

05.02.09 (V) “Present: Counsel for the plaintiff

Defendant not come present. Case called several times since morning. Neither the defendant nor any body on his behalf appeared in the Court. It is already 2.30 PM. Now defendant proceeded against exparte. Now to come up on 28.04.2009 for exparte evidence.

*ACJ(SD) Derabassi
05.02.2009*

The petitioner, who was defendant, claims that no notice regarding transfer of the suit was issued to the defendant. He, hence, submits that the Zimni orders recorded by the Court on 08.04.2008, 07.08.2008 and 05.02.2009 recording the presence of the counsel are factually incorrect. He has also drawn attention of the Court to the affidavit of the counsel representing the petitioner at Rajpura to the effect that no notice was given to the party or the counsel before transferring the case.

Learned counsel for the petitioner refers to Volume I Chapter 13 Rule 6 of High Court Rules and Orders, which is extracted as under:

Records to be sent immediately to the court to which case is transferred.- When a case is transferred by administrative order from one Court to another, the Presiding Officer of the Court from which it has been transferred shall be responsible for informing the parties regarding the transfer, and of the date on which they should appear before the Court to which the case has been transferred. The District Judge passing the order of transfer shall see that the records are sent to the Court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order the Court passing the order should fix a date on which the parties should attend the Court to which the case is transferred.

He further contends that it was mandatory for the Court to give notice to the party with further date of appearance before the transferred Court before passing any order to transfer the case/suit to another Court.

This rule has been held to be mandatory by the Hon'ble Supreme Court in the case of Reena Sadh Vs. Anjana Enterprises, 2008 (3) RCR

Learned counsel for the respondent, on the other hand, has submitted that it was the duty of the defendant-petitioner to be vigilant. He further submitted that defendant-petitioner through his counsel has infact appeared before the Court at Dera Bassi on 08.04.2008 and 07.08.2008 and therefore, now the petitioner cannot seek setting aside of the *ex parte* decree on technical ground.

Original record has been requisitioned in order to see the correctness of the stand taken by learned counsel for the petitioner. It has been noticed that no new Vakalatnama has been filed by any counsel on behalf of petitioner/defendant at Dera Bassi Court. There is no record showing that any notice was given to the petitioner-defendant before transferring the case from the Court at Rajpura to the Court at Dera Bassi. In the present case, learned counsel, who was appearing for the petitioner at Rajpura has filed affidavit stating that he has never appeared in this suit when it was pending at Dera Bassi.

Keeping in view the aforesaid facts, it appears that the presence of the counsel for the parties in the order dated 08.04.2008 and 07.08.2008 has been recorded in routine while copying the presence of the counsels from previous order. From the reading of the orders, which have been extracted above, it is not possible to make out that the case was adjourned on request of the learned counsel for the defendant.

In absence of material to prove that the petitioner was ever informed of the transfer of the case from the Court at Rajpura to the Court at Dera Bassi, the Court at Dera Bassi committed error while proceeding *ex parte* against the petitioner.

Keeping in view the aforesaid facts, the orders under challenge are

Set aside. The application is allowed. Consequently, *ex parte* decree dated

22.08.2011 is also set aside. Learned trial Court at Dera Bassi is requested to proceed with the case from the stage it was received on transfer from the Court at Rajpura.

Parties through their counsel are directed to appear before the trial Court on 22.01.2020.

Learned trial Court is requested to make sincere endeavour for disposal of the suit expeditiously.

January 09, 2020
Mehak Huria

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No