

[119] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3212-2021

Date of Decision : 15.12.2021

Balram and Ors.

...Petitioners

Versus

Ran Singh and Ors.

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Ram Pal Verma, Advocate for the petitioners.

B.S. Walia, J. (Oral)

[1] Prayer in the revision petition under Article 227 of the Constitution of India is for setting aside order, Annexure P/2 dated 13.05.2019 as well as order, Annexure P/4 dated 02.11.2021 passed by the learned Civil Judge (Sr. Div.) Sonapat whereby the application under Order 9 Rule 7 CPC for setting aside ex parte order, Annexure P/2 dated 13.05.2019 was dismissed.

[2] Learned counsel contends that the civil suit which was earlier pending in the Court of the learned Civil Judge (Jr. Div.), Sonapat was transferred to the Court of the learned Civil Judge (Sr. Div.), Sonapat on 13.05.2019 and the petitioners were not aware about the transfer of the case to the other Court, therefore, could not appear before the Court of the learned Civil Judge (Sr. Div.) Sonapat leading to passing of the impugned order, Annexure P/2 dated 13.05.2019. Learned counsel further contends that the application, Annexure P/3 under Order 9 Rule 7 CPC for setting aside ex parte order, Annexure P/2 dated 13.05.2019 was dismissed vide order, Annexure P/4 without appreciating the facts in the correct perspective.

[3] I have considered the submissions of learned counsel for the petitioners.

[4] The case as set up in the present petition is that transfer of the case from the Court of the learned Civil Judge (Jr. Div.), Sonapat to the Court of the learned Civil Judge (Sr. Div.), Sonapat was not to the notice of the petitioners, therefore, the petitioners could not appear before the Court of the learned Civil Judge (Sr. Div.), Sonapat. However, the same is in direct contradiction to the application (Annexure P/3) where in paragraph No.3, it is mentioned that on 13.05.2019, the petitioners could not appear before the Hon'ble Court within time and due to the absence of the petitioners, the Hon'ble Court was pleased to pass an order proceeding ex parte against them.

[5] I have also considered the order, Annexure P/4 dated 02.11.2021 passed by the learned Civil Judge (Sr. Div.), Sonapat, dismissing the application for setting aside ex parte order dated 13.05.2019, and perusal thereof shows that the learned Civil Judge (Sr. Div.), Sonapat took into account the conduct of the petitioners namely of their having been proceeded ex parte earlier also vide order dated 20.04.2017 and the said order having been set aside vide order dated 22.12.2017 and thereafter, the petitioners having been proceeded ex parte on 13.05.2019, that on 19.03.2019, two PWs were present but they were not examined on account of request made by the petitioners whereupon adjournment was granted subject to payment of costs of Rs.500/- to be paid by the petitioners to the witnesses present in the Court and the case was adjourned to 13.05.2019. On 13.05.2019, the petitioners chose not to present before the Court, accordingly, the petitioners i.e. the

defendants were proceeded ex parte by taking into account the fact that neither the petitioners (defendants) were present nor costs of Rs.500/- had been paid. The learned Civil Judge (Sr. Div.) Sonapat also took into account that no doubt the case had been received on 13.05.2019 by way of transfer from the Court of the learned Civil Judge (Jr. Div.), Sonapat but had the petitioners (defendants) and their counsel acted in a vigilant and in a bona fide manner then they could have enquired about their case from the Court of the learned Civil Judge (Jr. Div.), Sonapat and that it could not be presumed that counsel for the petitioners (defendants) or the petitioners would make no efforts to ascertain the court to which the case had been transferred and that in the circumstances, it was apparent that the ground of transfer of case taken up for non-appearance of the petitioners (defendants) was only an afterthought to further delay the matter. The learned Civil Judge (Sr. Div.) Sonapat came to the conclusion that the petitioners (defendants) had not acted vigilantly and had made it a routine practice of not-appearing before the Court, therefore, no leniency could be shown towards them. The explanation given for not appearing before the Court of the learned Civil Judge (Sr. Div.) Sonapat on 13.05.2019 does not reflect exercise of due diligence. The reasons as advanced by the petitioners in the instant petition in paragraph No.3 of the petition that they could not appear before the Court of the learned Civil Judge (Sr. Div.) Sonapat on account of not being aware about the transfer of the case not only reflects non-exercise of due diligence but also is in stark contradiction to the stand in the application, Annexure P/3 in which it is mentioned that the petitioners could not appear before the Court in time. The plea as put forth by the petitioners

does not inspire confidence.

[6] Accordingly, finding no merit in the petition, the same is dismissed in limine.

(B.S. Walia)
Judge

15.12.2021
'Amit'

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