

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

CR-3159-2015 (O&M)

Date of Decision : 07.12.2022

Sannawar & Others

....Petitioners

VERSUS

Bao & Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.S. Dinarpur, Advocate for the petitioners.

Mr. Sanjay Verma, Advocate for respondent No.1.

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ALKA SARIN, J. (Oral)

The present revision has been filed under Article 227 of the Constitution of India challenging three orders - one dated 11.12.2009 (Annexure P-2) whereby the defence of defendant-petitioner No.1 was struck-off as well as vide the same order defendant-petitioner Nos.2, 4, 5 and 6 and proforma respondent No.2 herein were proceeded against ex-parte; the second order under challenge is the order dated 22.01.2015 (Annexure P-3) whereby the application filed by the defendant-petitioner No.2 for setting aside the order proceeding against the defendant-petitioner No.2 ex-parte was dismissed and the third order under challenge is order dated 15.04.2015 (Annexure P-5) whereby the application filed by defendant-petitioner Nos.3 to 5 and proforma respondent No.2 for setting aside the ex-parte order was dismissed.

The brief facts relevant to the present lis are that plaintiff-respondent No.1 filed a suit for mandatory injunction directing the defendant-petitioners and defendant-respondent No.2 to hand over dowry

articles, Gold and Silver jewellery as detailed in Annexure-A attached with the plaint, which were handed over to the defendant-petitioners and defendant-respondent No.2 at the time of marriage of the plaintiff-respondent No.1 with defendant-petitioner No.1. Defendant-petitioner No.1 appeared in Court on 13.06.2009. However, despite numerous opportunities written statement was not filed by defendant-petitioner No.1 and hence his defence was struck off vide order dated 11.12.2009. Defendant-petitioner No.1 chose not to challenge the said order and the proceedings continued though applications were filed on behalf of the remaining defendants for setting aside the ex-parte proceedings which were also dismissed vide the same order dated 11.12.2009. The applications for setting aside the ex-parte proceedings against defendant-petitioner No.2 were dismissed vide order dated 22.01.2015 and the application for setting aside ex-parte proceedings against defendant-petitioner Nos.3 to 5 and proforma respondent No.2 was dismissed vide order dated 15.04.2015.

Learned counsel for the petitioners would contend that defendant-petitioner No.1 was given only two opportunities and his defence was struck off. It is further the contention that though there may not be sufficient cause to set aside the ex-parte proceedings, however, defendant-petitioner Nos.2 to 5 could be allowed to join the proceedings at any stage without retracting the earlier proceedings.

Per contra, learned counsel for respondent No.1 has vehemently contended that only in order to harass the respondent No.1 did the defendant-petitioner No.1 not file his written statement and thereafter from the year 2009 to 2015 chose not to challenge the order dated

11.12.2009 striking off his defence. It is further the contention that no ground is made out for allowing the revision petition as far as defendant-petitioner No.1 is concerned. Qua defendant-petitioner Nos.2 to 5, learned counsel for respondent No.1 would contend that no cogent reason is coming forward for not appearing before the Court and hence the orders dismissing the applications on 22.01.2015 and 15.04.2015 have rightly been passed.

Heard.

Firstly, dealing with the contention qua defendant-petitioner No.1, the order striking off the defence of defendant-petitioner No.1 was passed far back on 11.12.2009. Defendant-petitioner No.1 chose not to challenge the said order and sat pretty till the filing of the present revision petition in the year 2015. No cogent reason is coming forth for the extraordinary delay in challenging the said order. Even today learned counsel for defendant-petitioner No.1 is unable to give any explanation for the long delay in challenging the said order. In view of the long delay and in the absence of any cogent reasons forthcoming for not challenging the order dated 11.12.2009 till 2015, I do not find this to be a fit case to interfere and accordingly the revision petition qua defendant-petitioner No.1 stands dismissed.

Dealing with the second submission of the learned counsel for the petitioners that though there is no cogent reason forthcoming for defendant-petitioner Nos.2 to 5 not having joined the proceedings, however, they would be free to join the proceedings at any stage without retracting the earlier proceedings, I find merit in the argument raised by the learned counsel for petitioner Nos.2 to 5. It was held by the Supreme Court in the

case of **Sangram Singh Vs. Election Tribunal Kotah & Anr. [AIR 1955 Supreme Court 425]** as under :

“40. In the present case, we are satisfied that the Tribunal did not exercise its discretion because it considered that it had none and thought that until the ex parte order was set aside the defendant could not appear either personally or through counsel. We agree with the Tribunal, and with the High Court, that no good cause was shown and so the defendant had no right to be relegated to the position that he would have occupied if he had appeared on 17-3-1953, but that he had a right to appear through counsel on 20-3-1953 and take part in the proceedings -from the stage at which they had then reached, subject to such terms and conditions as the Tribunal might think fit to impose, is we think, undoubted. Whether he should have been allowed to cross- examine the three witnesses who were examined after the appearance of his counsel, or whether he should have been allowed to adduce evidence, is a matter on which we express no opinion, for that has to depend on whatever view the Tribunal in a sound exercise of judicial discretion will choose to take of the circumstances of this particular case, but we can find no justification for not at least allowing counsel to argue.”

In view of the above, the present revision petition qua petitioner Nos.2 to 5 is allowed and they would be permitted to join the proceedings from the date they appear before the Trial Court. Petitioner Nos.2 to 5 and respondent Nos.1 and 2 are directed to appear before the Trial Court on 16.12.2022 at 10.00 AM.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

December 07, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO