

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

**CR-1114-2022 (O&M)  
Date of decision : 25.04.2022**

Amardeep and Another

... Petitioner(s)

Versus

Swarankanta and Others

... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Rajan Singh Dadwal, Advocate for the petitioners.

**ALKA SARIN, J.**

This is a revision petition under Article 227 of the Constitution of India impugning the order dated 17.11.2018 (Annexure P-4) passed by the Civil Judge (Junior Division), Ludhiana striking off the defence of the defendant-petitioners herein.

Brief facts relevant to the present *lis* are that plaintiff-respondent No.1 filed a suit for recovery of ₹7,27,000/- against the defendants on the basis that a loan was given to defendant-respondent No.2 by the husband of the plaintiff-respondent No.1 and despite considerable time having elapsed the amount had not been returned. It is pertinent to point out that defendant No.1 in the suit is the Firm i.e. M/s Bhushan and Co. Merchants and Commission Agents and the remaining defendant Nos.2 to 5 are the partners of the said Firm. The defendant-petitioners put in

appearance on 05.12.2017. However, they did not file their written statement till 17.11.2018 despite the period of 90 days having elapsed. The written statement on behalf of the other co-defendants was filed on time. Accordingly, vide order dated 17.11.2018 (Annexure P-4) the defence of the defendant-petitioners was struck off. Thereafter, vide order dated 15.03.2019 (Annexure P-5), the defendant-petitioners herein were proceeded against *ex parte*. An application (Annexure P-6) under Order 9 Rule 7 of the Code of Civil Procedure, 1908 (CPC) was filed by the defendant-petitioners for setting aside the *ex parte* order dated 15.03.2019. On the application filed by the defendant-petitioners, vide order dated 26.08.2021 (Annexure P-7), the *ex parte* order dated 15.03.2019 was set aside. After having kept quiet since 17.11.2018, the present petition has been filed on 25.03.2022 for setting aside the impugned order dated 17.11.2018 (Annexure P-4).

Learned counsel for the defendant-petitioners has contended that counsel for the defendant-petitioners did not inform the petitioners that their defence had been struck off and on 15.03.2019 they were proceeded against *ex parte*. He has further contended that the defendant-petitioners came to know of the *ex parte* order dated 15.03.2019 only in August 2021 and when the Covid-19 cases started decreasing they immediately filed an application under Order 9 Rule 7 CPC for setting aside the order dated 15.03.2019. Learned counsel for the defendant-petitioners has relied upon the judgment of Supreme Court in the case of **Zolba Vs. Keshao and Others [2008(11) SCC 769]** and the judgments of this Court in the cases of **Punjab State & Ors. Vs. Pardeep Kumar [2018(1) Law Herald 304]** and **Nasero & Ors. Vs. Alisher [2011(3) RCR (Civil) 659]**.

Heard.

The defendant-petitioners in the present case are the co-defendants and the partners in the same Firm i.e. M/s Bhushan and Co. Merchants and Commission Agents. The written statement on behalf of the other co-defendants was filed on time. However, it has been argued that due to the fault of the counsel, the written statement was not filed on time and thereafter they were not informed of the order striking off their defence. The argument raised by learned counsel for the defendant-petitioners on the face of it is rather unbelievable. The defendant-petitioners in the present case all have a common interest being partners of the Firm i.e. M/s Bhushan and Co. Merchants and Commission Agents. Though the first time the defendant-petitioners appeared was on 05.12.2017, however, no written statement was filed on their behalf and yet it was filed on behalf of the other co-defendants. The argument raised by learned counsel for the defendant-petitioners that the defendant-petitioners were not informed of the impugned order striking off their defence is also not believable inasmuch as it has candidly been admitted by learned counsel for the defendant-petitioners that the same counsel is representing the defendant-petitioners in as many as 20 cases and the same counsel has been retained by them even now. It is further come on the record that subsequently the defendant-petitioners were also proceeded against *ex parte* and that *ex parte* order was set aside vide order dated 26.08.2021 (Annexure P-7) on an application filed by the defendant-petitioners themselves and it is only now in the March 2022 that the present revision petition has been filed. The entire endeavour of the defendant-petitioners in the present case seems to be to delay the proceedings on one

pretext or the other.

In view of the above, I do not find any merit in the present revision petition, which is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**( ALKA SARIN )  
JUDGE**

**25.04.2022**  
Yogesh Sharma

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