

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

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**CR-1982-2022 (O&M)
Decided on : 07.07.2022**

Devki Nandan Tyagi since deceased
through his LR Neeraj Tyagi

... Petitioner(s)

Versus

Isham Singh and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Rajesh Bansal, Advocate
for the petitioner(s).

MANJARI NEHRU KAUL, J. (Oral)

CM-7764-CII-2022

Application is allowed.

Zimni orders (Annexure P-9), passed by the learned trial Court,
filed along with the application are taken on record, subject to all just
exceptions. Office to tag the same at appropriate.

CR-1982-2022

The instant revision petition has been preferred by the petitioner under Article 227 of the Constitution of India, for setting aside of the order dated 11.04.2022 (Annexure P-1), passed by the learned Addl. Civil Judge (Sr. Divn.), Samalkha, District Panipat, vide which the application for setting aside *ex-parte* order dated 02.09.2019 (Annexure P-2) striking off the defence of defendant No.1 and permitting his LRs to file their written statement was dismissed.

Learned counsel for the petitioner submits that after the death of the original defendant-Devki Nandan Tyagi (hereinafter referred to as 'defendant No.1') on 03.03.2021, his legal heirs i.e. petitioner and

respondents No.4 & 5 moved an application dated 07.04.2021 (Annexure P-4), for impleading them as LR's of the defendant and for setting aside of the order dated 14.11.2019 (Annexure P-3), vide which defendant Devki Nandan Tyagi had been proceeded against *ex-parte*. The said application was allowed vide order dated 21.09.2021 (Annexure P-6) subject to the payment of costs of Rs.2000/-. Along with this, one opportunity was granted to the LR's of Devki Nandan Tyagi to lead and conclude their entire evidence.

Learned counsel submits that however, later on, when they inspected the case file, it came to their knowledge that the defence of the defendant - Devki Nandan Tyagi stood struck-off vide order dated 02.09.2019 (Annexure P-2) and hence in the absence of any written statement on record, they were left handicapped to lead any evidence. Thereafter, an application dated 05.10.2021 (Annexure P-7) for setting aside of the order dated 02.09.2019 (Annexure P-2) and for permitting the LR's of defendant Devki Nandan Tyagi to file written statement, was moved, which as already submitted was dismissed vide the impugned order.

Learned counsel further submits that the impugned order suffers from patent illegality, inasmuch as, the trial Court failed to appreciate that the LR's of defendant Devki Nandan Tyagi would suffer irreparable loss and grave prejudice would thus be caused to them, as in the absence of any written statement they would not be able to defend the case. He further submits that since the petitioner and the other LR's of Devki Nandan Tyagi, were unaware about the proceedings, they should have been given an opportunity to file a written statement for properly defending the case and for securing the ends of justice.

I have heard learned counsel for the petitioner and perused the relevant material on record.

It would be relevant to point out here that Devki Nandan Tyagi was proceeded against *ex-parte* vide order dated 06.08.2015, as he not only failed to file his written statement but even failed to put in an appearance before the trial Court. Thereafter, aforementioned order dated 06.08.2015 of the Court below was set-aside on an application moved by him. Devki Nandan Tyagi was granted one opportunity by the trial Court to file his written statement. However, he moved an application under Order 7 Rule 11 CPC instead. The application under Order 7 Rule 11 CPC was allowed vide order dated 15.04.2019 and the case was then adjourned to 13.05.2019 for filing of written statement by the defendants, as well as for filing of court fee by the plaintiff. The defendants did not file their written statements on 13.05.2019, as a result of which, the case was adjourned to 16.07.2019 and thereafter again to 06.08.2019. However, still no written statement was filed by the defendants including Devki Nandan Tyagi. Resultantly, in the above circumstances vide order dated 02.09.2019 (Annexure P-2), the defense of Devki Nandan Tyagi was struck-off on 05.10.2021.

A perusal of the Court proceedings which have been placed on record today leaves no manner of doubt that the original defendant No.1 – Devki Nandan Tyagi, was not diligent enough in pursuing the matter. This Court is unable to accept the submissions of the learned counsel that the LRs of Devki Nandan Tyagi were unaware about the proceedings of the trial, and hence they did not move any application prior in time for setting aside of the order dated 02.09.2019 (Annexure P-2). It would be

pertinent to observe here that a perusal of the zimni orders, reveals that the petitioner and the other LRs of Devki Nandan Tyagi are being represented by the same counsel before the trial Court, who had represented Devki Nandan Tyagi. Therefore, it cannot be digested and believed that the petitioner and the other LRs of Devki Nandan Tyagi, would not have been aware about the previous proceedings and orders passed by the trial Court including the orders passed during the lifetime of Devki Nandan Tyagi.

It cannot be over-emphasized that the law helps the vigilant and not the dormant. Hence, a litigant who is not diligent enough in pursuing his case would naturally have to bear the consequences of his/her inaction. The suit in question was instituted in the year 2015. The plaintiffs evidence is nearing completion and in case the prayer of the petitioner to file written statement at this belated stage is allowed, it would without a doubt cause grave prejudice to the plaintiff and the trial would commence all over again.

This Court is thus not inclined to exercise its revisional jurisdiction under Article 227 of the Constitution of India to set aside the impugned orders. Accordingly, the instant revision petition fails and stands dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

July 07, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*