

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-4018-2017 (O&M)

Date of Decision: 28.7.2023

Rattan Lal and another

....Petitioners

VERSUS

M/s Apollo Land & Housing Co. Ltd. and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Animesh Sharma, Advocate with
Mr. Vikas Chaudhary, Advocate,
for the petitioners.

Mr. Kunal Dawar, Advocate assisted by
Ms. Tanika Goyal, Advocate,
Mr. Mayank Aggarwal, Advocate,
for respondents No.1 and 2.

Mr. Vikrant Rana, Advocate,
for respondents No.10 and 11.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioners/defendants No.3 and 4 for setting aside impugned order dated 5.9.2014 (Annexure P-2) whereby the petitioners are proceeded against *ex parte* and impugned order dated 17.4.2017 (Annexure P-5) whereby the application filed by the petitioners to set aside order (Annexure P-2) has been dismissed by the learned trial Court of Civil Judge, Gurugram.

2. Brief facts of the case are that the plaintiffs filed suit for declaration and partition with consequential relief of permanent injunction against respondents No.1 and 2 while the petitioners and respondents NO.3 to 5 were impleaded as proforma defendants in the said civil suit. The petitioners were proceeded against *ex parte* by the learned trial Court vide

order dated 5.9.2014 (Annexure P-2) and the application filed by the petitioners to set aside *ex parte* proceedings against them, was also dismissed vide order (Annexure P-5). Being aggrieved, the petitioners have filed the present petition.

3. Counsel for the petitioners submits that both the petitioners were about 80 years of age and out of them, petitioner No.1-Rattan Lal has already died and is represented by his legal heirs. He further submits that the petitioners were under the impression that they were also impleaded as plaintiffs in the civil suit and as such, they remained silent and they never engaged any counsel to get mark their presence before the learned trial Court. So, order dated 5.9.2014 (Annexure P-2) passed by the learned trial Court is liable to be set aside. He further submits that in the meantime, talks regarding compromise started but did not materialise and then the plaintiff examined 4 PWs from 5.9.2014 to 6.9.2016 and thereafter, an application for amendment of written statement by contesting defendants was filed and the same was allowed as there was no objection to the same from the side of the plaintiffs. Counsel for the petitioners further submits that at present, the suit is fixed for cross-examination of DW1 and one application under Order 1 Rule 10 CPC filed by the plaintiffs is also pending for its disposal. He further submits that now there is apprehension in the minds of the petitioners that the plaintiffs have colluded with respondents No.1 and 2 who are builders to defeat the rights of the petitioners in the suit property. He further submits that there is good cause to set aside the impugned orders. In support of his contentions, counsel for the petitioners has placed reliance upon **Sangram Singh v. Election Tribunal, Kotah and another**, AIR 1955 SC 425 and the decision of this Court in **Ajai Singh v. Gurinder**

Singh and others, Civil Revisoin No.2391 of 2009 decided on 26.5.2009.

4. On the other hand, counsel for respondents No.1 and 2 submits that the petitioners are in knowledge about the pendency of the suit since very beginning and counsel filed memo of appearance on their behalf in the trial Court but on 5.9.2014, no one was present on behalf of the petitioners and accordingly, they were proceeded against *ex parte* vide order Annexure P-2 and thereafter, the petitioners filed an application for setting aside *ex parte* proceedings but the same was rightly dismissed by the learned trial Court vide order dated 17.4.2017 (Annexure P-5). Counsel for respondents No.1 and 2 further submits that in the instant case, notice of the suit was sent to the petitioners and they were duly served as is evident from Annexures P-7 and P-8 and thereafter, the petitioners through their counsel put appearance in the civil suit and were subsequently proceeded against *ex parte* on 5.9.2014. He further submits that the petitioners are proforma defendants and no relief has been claimed against them and as such, no prejudice is going to be caused to the petitioners in case they do not file their written statement. It is further submitted that the plaintiffs and the petitioners are closely related and interest of the petitioners is being safeguarded by the plaintiffs. It is further submitted that in the given circumstances, the present petition deserves to be dismissed. In support of his arguments, counsel for respondents No.1 and 2 invited attention of this Court to **Smt. Dipo and others v. Kulwant and others**; 1977 RLR 448.

5. I have considered the submissions made by the counsel for the parties.

6. Admittedly, suit for declaration and partition with consequential relief of permanent injunction is filed by the

plaintiffs/respondents No.6 to 12 against respondents No.1 and 2, respondents No.3 to 5 and the petitioners. It is also evident that in the said civil suit, main contesting defendants are respondents No.1 and 2 while the petitioners and respondents No.3 to 5 are proforma defendants. It means that no relief has been claimed by the plaintiffs against the petitioners.

7. From the perusal of Annexures P-7 and P-8, it appears that the petitioners namely Rattan Lal and Ram Kishan were duly served for 4.2.2011 and one Advocate appeared in the trial Court and filed memo of appearance on their behalf and subsequently, the petitioners were proceeded against *ex parte* on 5.9.2014 as none appeared on their behalf in the trial Court on that date. Thereafter, the petitioners filed application dated 21.2.2017 for setting aside *ex parte* order dated 5.9.2014. Copy of the said application is Annexure P-3 wherein the petitioners took plea that they came to know about the pendency of the suit on 18.2.2017 and prior to that, they never engaged any counsel or authorised any person to appear on their behalf in the civil suit. However, in the present petition, the petitioners took plea that they are illiterate and rustic persons and that respondent No.6- Mahesh, their nephew made them believe that the civil suit has been filed even on behalf of the petitioners and that proceedings in the suit continued and later on, they came to know that they were impleaded as proforma defendants by aforesaid Mahesh. So from the aforesaid plea taken by the petitioners in the present petition, it appears that the petitioners were in knowledge about the pendency of the suit filed by aforesaid Mahesh from the very beginning. As has already been discussed above, the petitioners are only proforma defendants and thus, no prejudice is going to be caused to the petitioners in case they are not allowed to file their written statement.

8. In light of above, this Court is of the view that the petitioners have failed to show sufficient cause to relegate them to the stage of filing written statement. However, they can participate in the proceedings before the learned trial Court from the stage as it exists on today. With these observations, the present petition stands disposed of.

(KARAMJIT SINGH)
JUDGE

July 28, 2023

Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No