

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5922 of 2018

Date of Decision: 21.07.2023

Harbant Singh alias Hansa and Another

... Petitioner(s)

Versus

Jaswant Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Dharamveer Phour, Advocate
for the petitioner(s).

Mr. Parveen Kumar Garg, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The petitioners herein were the defendants in a suit filed by the plaintiffs for grant of decree of compensation of ₹20,00,000/- for the assassination of Sher Singh and infliction of injuries to Jit Singh. The petitioners were proceeded against *ex parte*. The *ex parte* judgment and decree was passed on 22.10.2012. Thereafter, on 01.05.2013, the petitioners filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the CPC”) for setting aside the *ex parte* judgment and decree which has been dismissed by both the Courts below.

2. In fact, the plaintiffs filed a suit for the grant of decree of compensation as the defendants killed their predecessor-in-interest of the plaintiffs, namely Sher Singh and inflicted injuries on Jit Singh. In a criminal case, the petitioners have been convicted, though, the matter is

subjudice before the Division Bench in appeal.

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3. It has come on record that notice was issued to the petitioners, who were defendants in the civil suit, for appearance on 07.01.2009. Firstly, the court's notice was tendered through the official of the prison to the petitioners on 05.11.2008. The petitioners are stated to have refused to accept the summons while stating that they would like to consult their Advocate. Thereafter, again on 23.12.2008, an attempt was made to serve the petitioners but they refused. It has come in the evidence that the Warrant Munshi of the District Jail, Sangrur, was present when the Process Server-Surinder Kumar requested the petitioners to accept the notice of the suit, but they refused.

4. Challenging the correctness of the aforesaid finding, this revision petition has been filed.

5. The learned counsel representing the petitioners contends that the petitioners who are illiterate and confined in the prison deserve one more chance to defend the suit and the conviction of the petitioners is not final as the appeal is pending.

6. This Court has considered the submissions. It has come on record that the court's notice was tendered to the petitioners while they were in custody. However, they immediately refused to receive the summons on the ground that they wish to consult their lawyer. After a period of eight days, once again, the summons of the court were sought to be served. However, the petitioners refused to accept the summons. This fact has been proved by the evidence of Warrant Munshi of the District Jail, Sangrur and RW.2 Surinder Kumar, Process Server.

7. Under Order IX Rule 13 of the CPC, an *ex parte* judgment and

decree can be set aside only if the Court is satisfied that the summons were not duly served or the applicant was prevented by any sufficient cause from appearing when the suit was called on for hearing. It has been observed that any irregularity in service of summons shall not be sufficient to set aside the decree. If we apply the aforesaid test, it is evident that the petitioners did not succeed.

8. Moreover, both the Courts below, on appreciation of evidence, have arrived at the conclusion. In exercise of the revisional jurisdiction, the scope of jurisdiction of this Court is limited.

9. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

July 21, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No