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

**CR-5950-2018 (O&M)
Date of Decision: 03.02.2023**

Partap and others

....Petitioners

Versus

Suraj Mal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. B.K.Bagri, Advocate,
For the petitioners.

None for respondent No.1.

None for respondent No.2.

ARUN MONGA, J. (ORAL)

Revision petition herein is for setting aside order dated 29.02.2016 (Annexure P-2) vide which petitioners were proceeded *ex parte* and order dated 10.08.2018 (Annexure P-4) vide which their application for setting aside the *ex parte* order was also dismissed by Court of learned Civil Judge (Senior Division), Bawal.

2. Learned counsel for petitioners/defendants No.2 to 5 submits that respondent No.1/plaintiff filed suit for possession by way of partition. Respondent No.2/defendant No.1 filed his written statement on 29.02.2016. But their previous counsel at Rewari did not appear and written statement of petitioners was not filed by their counsel despite the fact that it had been prepared. Resultantly the impugned *ex parte* order was passed. He submits that learned counsel for petitioners at Civil Court, Rewari never brought to the notice of petitioners the fact regarding the *ex parte* order. From 06.05.2017, the new Courts started functioning at Bawal where the case of petitioners was transferred from Rewari. Their earlier counsel never visited

Bawal. Then petitioners engaged a new Counsel for defending their case at Bawal. The new counsel informed the petitioners that due to non-filing of written statement by their earlier counsel, they are already proceeded *ex parte*. Then petitioners filed application for setting aside the *ex parte* order, which was also dismissed by Court of Learned Civil Judge (Sr. Division), Bawal on the ground that counsel for petitioners is not participating in any proceeding of the case and had not cross-examined the summoned witness of respondent No.1 and fixed the case for defendants' evidence. Learned counsel for petitioners submits that delay in filing the application for setting aside the *ex parte* order was not intentional as they were not aware about the case.

3. According to learned counsel, impugned orders have resulted into grave miscarriage of justice and for effective adjudication of the case, petitioners may be permitted to participate in the proceedings, in the interest of justice and equity.

4. None appears on behalf of respondents, despite service.

5. I have heard arguments of learned counsel for petitioners and perused the case file.

6. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. I deem it appropriate to grant just one opportunity to petitioners to participate in the proceedings, subject to payment of costs.

7. In the premise, the instant revision petition is allowed. Impugned orders dated 29.02.2016 (Annexure P-2) and 10.08.2018 (Annexure P-4) are set aside, subject to payment of Rs.10,000/- as costs to be paid to plaintiff/respondent No.1, which shall be the condition precedent.

If the costs are not paid, as directed, the impugned orders shall stand restored.

8. Pending application(s), if any, shall also stand disposed of.

February 03, 2023
vandana

(ARUN MONGA)
JUDGE

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