

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

CR-6428-2016(O&M)

Reserved on:-20.4.2023

Date of Pronouncement:-26.4.2023

Girraj (since deceased) through his LRs and another

...Petitioners

Versus

Raj Pal

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.C. Shahpuri, Advocate
for the petitioners.

Mr.Adarsh Jain, Advocate
for the respondent.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 11.8.2014 passed by the Court of Addl.Civil Judge (Sr.Divn.), Hathin vide which an application filed by the petitioners/defendants under Order 9 Rule 13 CPC for setting aside ex-parte judgment and decree dated 16.8.2010 had been dismissed as well as judgment dated 17.5.2016 passed by Additional District Judge, Palwal vide which the appeal filed against that order had been rejected.

2. The defendants, who are revision petitioners before this Court pray that the revision petition be accepted, the impugned order/judgment be set aside by way of acceptance of the revision petition.

3. Briefly stated, facts of the case are that plaintiff Raj Pal has brought a suit for grant of permanent injunction against defendants Girraj

and his father Bhajan Lal of their village Bahin, Tehsil Hathin, the then District Faridabad now Palwal; on getting notice, both the defendants had put in appearance, filing written statement contesting the suit; issues on merits were framed; when the case was fixed for evidence of the plaintiff, the defendants absented from the Court and were proceeded against ex-parte vide order dated 4.4.2007; after recording of ex-parte evidence, the suit of the plaintiff was decreed ex-parte vide judgment and decree dated 16.8.2010.

4. Subsequently, the defendants appeared and filed an application under Order 9 Rule 13 CPC for setting aside of ex-parte judgment and decree; notice of that application was issued to respondent/plaintiff, who put in appearance and contested the application. Vide order dated 11.8.2014 that application was dismissed.

5. Feeling aggrieved, the defendants had preferred an appeal before District Judge, Palwal, which was assigned to Additional District Judge, Palwal, who vide judgment dated 17.5.2016 dismissed the same, leaving the defendants aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was given to the respondent/plaintiff, who put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the revision petition.

7. The revision petitioners, who are defendants in the civil suit had absented from the Court without any justifiable reason and were proceeded against ex-parte on 4.4.2007. Subsequently, they had appeared

and filed application for setting aside ex-parte judgment and decree contending that the case was fixed for 24.4.2006 for the evidence of the plaintiff in the Court of Civil Judge, Palwal and when defendant No.2 reached at Palwal Court, he came to know from his counsel that suit had been transferred to Civil Court at Nuh, District Mewat; counsel for the defendants had informed the defendants that the Court at Nuh would send notice for the next date of hearing and as and when they received the notice, they would have to engage another Advocate at Nuh, however, the defendants did not receive any notice from the Court at Nuh and could not know about the pendency of the Civil suit; defendant No.1, who is son of defendant No.2 aged about 35 years had fallen seriously sick in the month of January, 2006 and defendant No.2 was only the person to attend to him and therefore could not attend the Court and make further inquiry regarding status of the case; serious prejudice has been caused to defendants by passing ex-parte judgment and decree, therefore, the said judgment and decree be set aside.

8. The plaintiff had resisted the application.

9. The trial Court of Additional Civil Judge(Sr.Divn.), Hathin vide order dated 11.8.2014 by giving issue-wise findings on the basis of pleadings and evidence brought on record by the parties rejected the plea of the petitioners that the Court at Nuh had not sent any notice to them and after waiting for the notice, the inquiries were made. It had been rightly observed that defendants themselves were required to be vigilant enough since many cases had been transferred to Court at Nuh and it was well within their knowledge that cases had been so transferred; they were

not expected to sit idle waiting for the notice to be issued by the Court, in that way, no sufficient reason was found to be there by the trial Court to set aside the ex-parte judgment and decree. Similarly, the Appellate Court of Additional District Judge, Palwal was in agreement with the trial Court observing that the defendants were knowing fully well about the pendency of the suit filed by the plaintiff. To prove their plea that their counsel had informed them that case had been transferred to Nuh Court and they would receive notice therefrom, they were required to produce their counsel, who had so informed them but they did not do so. They have not opted to get the order vide which they were proceeded against ex-parte set aside. They have not explained the circumstances, which prevented them from appearing in the Court and further they themselves were required to appear before the Court at Nuh when they came to know through their counsel that their case had been transferred to the Court at Nuh. A clear finding had been given that they intentionally did not do so rather chose not to contest the suit and were rightly proceeded against ex-parte and there was no ground to set aside the ex-parte judgment and decree.

10. The impugned orders/judgments passed by the Courts below are quite detailed and well reasoned and those do not suffer from any illegality or infirmity and are not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned orders/judgments by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands

dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

26.4.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No