IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2280 of 2023
Date of decision:02.09.2023.

M/s Guru Nanak Rice Mills and others

….Petitioners

Versus

M/s Hardial Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Prabhjot Singh, Advocate
for the petitioners.

Mr. K.B.S. Mann, Advocate
For he respondent.

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VIKRAM AGGARWAL, J.(ORAL)

1. The present revision petition assails the order dated 30.01.2023, vide which the application filed by the petitioner under Order 9 Rule 13 CPC was allowed and the *ex parte* judgment and decree dated 30.10.2018 (Annexure P-2) was set aside but a condition was imposed that the ex parte judgment and decree was being set aside subject to the present petitioner furnishing a bank guarantee *qua* the decretal amount within 20 days, failing which the petition under Order 9 Rule 13 CPC would stand dismissed.

2. The facts, as emanating from the petition, are that a suit for recovery of Rs.13,57,968.97/- was filed by the respondent-plaintiff against the petitioners-defendants (Annexure P-1). However, the petitioners-defendants did not appear in the said suit as a result of which they were proceeded against *ex parte* and *ex parte* judgment and decree dated 30.10.2018 (Annexure P-2) was passed. An application under Order 9 Rule 13 CPC (Annexure P-3) was filed by the petitioners-defendants for setting aside the said *ex pare* judgment and decree.

The same was opposed by way of a reply (Annexur P-4). However, vide order dated 30.01.2023 (Annexure P-5), the application was allowed. A categoric finding was returned that the petitioners-defendants had not been served in the suit. However, the *ex parte* judgment and decree was set aside but a condition was imposed that the petitioners-defendants would furnish a bank guarantee with regard to the decretal amount. It is this condition which led to the filing of the present revision petition.

3. I have heard learned counsel for the parties and have perused the paper book.

4. Learned counsel for the petitioners has submitted that once the trial court had returned a finding that the petitioners-defendants had not been served, there was no occasion for the trial Court to impose the condition of furnishing of a bank guarantee.

5. On the other hand, learned counsel representing the respondent-plaintiff has submitted that the condition was imposed keeping in view the conduct of the petitioners-defendants as they were having the knowledge of the pendency of the Civil Suit since the complaint under Section 138 of the Negotiable Instruments Act, 1881, was also pending between the parties. Learned counsel submitted that the condition of furnishing of bank guarantee was imposed to safeguard the rights of the respondent-plaintiff.

6. I have considered the submissions made by learned counsel for the parties.

7. The trial Court allowed the application filed by the petitioners-defendants under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree. A categoric finding was returned by the trial Court that no summons had ever been received by the petitioners-defendants and that they had been proceeded against *ex parte* on the basis of receipt of registered cover which had been

received back unserved. Even the summons issued by way of the normal process had not been received back served or otherwise. The contention of the respondent-plaintiff that the petitioners-defendants had due knowledge of the pendency of the Civil Suit was rejected. The trial court went on to allow the application under order 9 Rule 13 CPC but while setting aside the *ex parte* judgment and decree dated 30.10.2018 (Annexure P-2), a condition was imposed that the petitioner-defendants would furnish a bank guarantee for Rs.13,57,968.97/- within 20 days, failing which the petition under Order 9 Rule 13 CPC would stand dismissed.

In the considered opinion of this Court, the condition so imposed is completely unsustainable in view of the categoric findings returned by the trial Court with regard to the service. In so far as safeguarding of interests of the respondent-defendant is concerned, it would be open for the respondent-plaintiff to proceed in accordance with law before the trial Court.

In view of the above, the present revision petition is allowed. While maintaining the decision of the trial Court vide which the application under Order 9 Rule 13 CPC was allowed and the *ex parte* judgment and decree was set aside, the condition imposed by the trial Court with regard to furnishing of the bank guarantee is set aside.

(VIKRAM AGGARWAL)
JUDGE

September 2nd, 2023
Rekha

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