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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2268-2023 (O&M)

Date of decision: May 10, 2023

M/s Dwij Industries Pvt. Ltd. and another

....Petitioners

versus

Ajay Chauhan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ravi Malik, Advocate for
Mr. S.K. Panwar, Advocate for petitioners.

ARUN MONGA, J. (ORAL)**CM-7958-CII-2023**

For the reasons stated in application, same is allowed. Copy of zimni order dated 01.09.2022 (Annexure P-8) is taken on record subject to all just exceptions.

Main case (O&M)

Revisionist before this Court seeks to set aside impugned order dated 24.02.2023 (Annexure P-7) passed by learned Civil Judge (Junior Division), Faridabad, whereby application filed by petitioners-defendants No.1 and 2 for setting aside *ex parte* order dated 08.09.2022 (Annexure P-2), was dismissed.

2. Petition herein is premised on the averments that respondent-plaintiff No.1 filed a Civil Suit for declaration *inter alia* to the effect that documents pertaining to two vehicles i.e. Scorpio and Verna car got signed from the plaintiff forcibly and illegally were liable to be declared as null and void. Further relief of injunction etc. has also been sought as detailed in the plaint (Annexure P-1).

2.1. On 18.01.2023, petitioners came to know about *ex parte* order dated 08.09.2022 (Annexure P-2) and they immediately moved an application for setting aside the same.

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2.2. Vide impugned order dated 24.02.2023 (Annexure P-7), learned trial Court declined the aforesaid application. However, liberty was granted to petitioners to join proceedings from existing stage itself i.e., advance final arguments since respondent No.1-plaintiff had already closed *ex parte* evidence.

3. I have heard learned counsel appearing for petitioner and perused the case file.

4. On a Court query, learned counsel appearing on behalf of petitioners states that no doubt service of summons was effected on one of the representatives of the petitioner-company, but per his instructions, he was a low-key official not authorized to receive the summons. He further states that said official of the Company was not aware of the legal technicalities involved and coupled with the same, he did not inform his superior *qua* pendency of the case and there was thus, no deliberate attempt on the part of the Company to avoid the Court proceedings. He further states that upon coming to know pendency of case when one of the representatives of the Company visited the Court premises in connection with another case, on being told that they have been proceeded *ex parte* in the present case, without any further delay, application for recalling *ex parte* dated 08.09.2022 was filed. He further states that learned trial Court without going into the reasons stated in the application has summarily dismissed the same and on the other hand, has proceeded against the petitioner to conclude the entire trial with alacrity and matter is now fixed on the basis of *ex parte* evidence adduced by the plaintiff-respondent.

4.1. Learned counsel has drawn my attention to the zimni order of the trial Court Annexure P-2 dated 08.09.2022. It's relevant part is as under:-

*“Present: Sh. SHAYAD ALI Advocate for plaintiff.
None for defendant No.1 to 4.*

Case called several times since morning. None appeared on behalf of defendants No.1 to 4. It is already 3.30 p.m. Waited sufficiently. No further wait is justified. Hence, defendants No.1 to 4 are hereby proceeded against ex parte. xx xx xx”

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It would be seen the order is wholly silent about service of summons upon the petitioners and does not show on what basis they were proceeded against *ex parte*.

5. Trite law it is that procedure is the handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by filing written statement ought not to be taken away by the Court except in a case of their deliberate omission/ failure to do so more so if the other side can be compensated by costs. Prejudice would indeed be caused to petitioners herein, unless afforded an opportunity to contest the case and file written statement. Trial in injunction suit may lead to unjust consequences in the absence of affording opportunity to petitioners to file written statement.

6. Be that as it may, given the nature of suit and relief sought by respondent No.1/plaintiff against the petitioners, it would indeed prejudice petitioners in case, they are not given opportunity to contest the trial. In the totality of circumstances, the petitioners' application for setting aside *ex parte* order dated 08.09.2022 is allowed and impugned order dated 24.02.2023 (Annexure P-7) is set aside, subject to payment of costs of Rs.10,000/- to respondent No.1-plaintiff. Trial Court to proceed in accordance with law after giving one opportunity to petitioners to file written statement.

7. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

May 10, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No