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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3379-2023 (O&M)

Date of decision: May 30, 2023

Deepak Talwar and others

....Petitioners

versus

Allahabad Bank

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Shantanu Bansal, Advocate,
Mr. Yugank Goyal, Advocate for the petitioners.Mr. Navjit Singh, Advocate,
Mr. Saurav Goel, Advocate,
Mr. Gaurav Goel, Advocate for respondent-Bank.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 18.04.2023 (Annexure P-3) passed by learned Civil Judge (Junior Division), Ambala whereby application of the petitioner-defendants for setting aside order dated 06.02.2020 (Annexure P-2), was dismissed.

2. Averments are that respondent-plaintiff filed a suit for recovery of Rs.5,46,662/- inclusive of interest against the Stock/ machinery detailed in the plaint and against the personal assets of petitioner/ defendants. Vide order dated 06.02.2020 (Annexure P-2), petitioners were ordered to be proceeded *ex parte*. Aggrieved, petitioners filed application for setting aside of aforesaid order, which was also dismissed vide impugned order dated 18.04.2023 (Annexure P-3).

3. Learned counsel for petitioner-defendants would contend that non-appearance of defendants before learned trial Court on a particular date was not intentional. Defendants will be prejudiced and will suffer great loss in case the *ex parte* order is not set aside. He also submits that no notice/ summons was ever served upon defendants. He further urges that endorsement of process of service is not

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supported by any mentioning of “time” as to when summons were delivered, the same being contrary to mandate of Order V Rule 18 of Code of Civil Procedure, 1908 (for short ‘CPC’).

4. On advance knowledge of listing of the case, learned counsels for respondent-plaintiff/ Bank appear and oppose the revision.

5. I have heard learned counsel for parties and perused the record.

6. Impugned herein is an order dated 06.02.2020 (Annexure P-2) when on the date fixed before learned trial Court, defendants remained unrepresented and in the premise, they were proceeded *ex parte* and trial was adjourned for *ex parte* evidence of the plaintiff. On a Court query, learned counsel for petitioners states that *ex parte* evidence is yet to be adduced and at the same time, petitioners are not being allowed to participate in the proceedings. Having read the impugned order, I am of the view that petitioners were proceeded *ex parte* only for a particular date when they remained unrepresented and in case, they wish to now join proceedings, learned trial Court would allow them to join by giving one opportunity to file written statement subject to payment of costs of Rs.5,000/- payable to plaintiff and proceed further in accordance with law.

7. To that extent, impugned order is modified. It is made clear that defendants shall not be treated *ex parte* for future proceedings after passing of impugned order.

8. Disposed of.

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

(ARUN MONGA)
JUDGE

May 30, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No