

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

CM-9594-C-2022 in/and
RSA-2789-2020
Date of Decision :06.01.2023

Bimla Devi and others

...Appellants

Versus

Guddi and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Atul Gaur, Advocate for the appellants.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present regular second appeal, challenge is to decree dated 01.03.2019 passed by the Civil Judge (Jr. Division) Sonapat, by which, the suit filed by the appellants/plaintiffs was dismissed under Order 17 Rule 3 of the C.P.C. for want of evidence and an appeal filed against the said decree, was also dismissed by the lower Appellate Court vide order dated 16.08.2022.

Learned counsel for the appellants submits that though, there is a miss but he is not able to submit as to whether the appellants were at fault or somebody else, who was representing the appellants before the Court below. Learned counsel for the appellants submits that the litigation should be decided on merits and therefore, order dated 01.03.2019 passed by the trial Court dismissing the suit filed by the appellants as well as order dated 16.08.2022 passed by the lower Appellate Court dismissing the appeal filed by the appellants against the said order, may kindly be set aside.

In the present appeal, it has come on record that issues were framed on 23.05.2018 and appellants-plaintiffs were directed to produce the evidence on 30.07.2018. Various opportunities were given to the appellants/plaintiffs on 05.09.2018, 20.10.2018 and 09.01.2019 to adduce the evidence but the same were not availed/encashed by the appellants/plaintiffs.

Thereafter, on the asking of the learned counsel for the appellants-plaintiffs, another opportunity was given subject to payment of Rs.200/- as costs and the case was adjourned to 28.01.2019. Neither the cost was deposited nor opportunity was availed by the appellants-plaintiffs for leading evidence and the case was again adjourned on the asking of the learned counsel for the appellants-plaintiffs so as to allow them another opportunity to pay cost and adduce evidence and case was adjourned to 27.02.2019.

On 27.02.2019, again neither cost was paid nor evidence was produced by the appellants-plaintiffs and case was adjourned to 01.03.2019. On 01.03.2019, none appeared on behalf of the appellants-plaintiffs so as to inform whether the cost has been paid or they are ready to lead evidence. Faced with this situation, trial Court proceeded in a manner required for and evidence of the appellants-plaintiffs was closed by order dated 01.03.2019. Thereafter, as no evidence was led by the appellants-plaintiffs, defence counsel also did not lead any evidence and as there was nothing to rebut, the trial Court proceeded to decide the suit and dismissed the same vide order dated 01.03.2019, keeping in view the provisions of Order 17 Rule 3 of the C.P.C for want of evidence.

Appeal filed by the appellants-plaintiffs against the order dated

01.03.2019, as no valid justification was given for defaults which occurred due to the acts of the appellants-plaintiffs, was also dismissed by the lower Appellate Court vide order dated 16.08.2022 holding that no infirmity was brought to the notice of the lower Appellate Court qua passing of the order dated 01.03.2019 by the trial Court.

In the present appeal also learned counsel for the appellants has not been able to show any valid justification with regard to the conduct of the appellants-plaintiffs, which resulted in order dated 01.03.2019 as well as dismissal of their appeal vide order dated 16.08.2022 by the Courts below. Once, the appellants-plaintiffs have been given sufficient number of opportunities to lead evidence, there was no other option left with the trial Court but to decide the suit filed by the appellants-plaintiffs keeping in view the provisions of C.P.C. and the suit was rightly taken up for consideration, keeping in view the fact which have been narrated hereinbefore and the same was dismissed due to want of evidence keeping in view the provisions of Order 17, Rules 3 of the C.P.C.

In somewhat similar circumstances, this Court in **RSA No.699-2013** titled as **Munish Kumar vs. Parveen Kumar** decided on 06.05.2014 has held that keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **M/s Shiv Cotex vs. Tirgun Auto Plast P. ltd and others 2011(3) ACJ 728 (SC)**, non-leading of evidence despite being given sufficient opportunities can lead to passing of order by the competent Court of law under Order 17, Rule 3 of the C.P.C as repeated adjournments cannot be granted and that too without any valid justification.

Relevant paragraphs of the judgment are as under:-

“13. It may further be noticed that in the instant case, vide

order dated 17.12.2010 the trial Court had granted last opportunity for recording evidence on behalf of the plaintiff-appellant and the case was adjourned to 10.02.2011, on which date no witness was present and the trial Court again adjourned the case for 24.03.2011 granting last opportunity and imposing costs of Rs.200. On 24.03.2011, there was no witness of the appellant present and the case was again adjourned to 12.05.2011 for evidence of the plaintiff-appellant and for making payment of costs. On 12.05.2011 also, there was no witness on behalf of the plaintiff-appellant and the case was again adjourned to 21.07.2011 by imposing further costs of Rs.500. Though, learned counsel for the appellant was present but neither costs were paid nor any evidence led.

14. In 'M/s Shiv Cotex v. Tirgun Auto Plast P. Ltd. And others' 2011(3) ACJ 728 (SC), Hon'ble the Supreme Court has held that after grant of three adjournments for leading evidence, when no evidence was led, further adjournment cannot be granted. In the aforesaid judgment, Hon'ble the Apex Court further held that it is high time for courts that Courts become sensitive to delays in justice delivery system and realize that the adjournments do not dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. It was further held that the courts, particularly trial Courts, must ensure that on every date of hearing, effective progress takes place in the suit. In the instant case, despite granting a lot of opportunities, the appellant failed to produce any witness on his behalf and in these circumstances he could not be allowed to take benefit of his own wrong raising an argument on the basis of the judgment of Hon'ble the Supreme Court in the case of B. Janakiramaiah Chetty (supra)."

Keeping in view the above, learned counsel for the appellants

has not been able to bring any factual discrepancy in the order passed by the trial Court as well as Lower Appellate Court and no argument has been

raised as to contend that the said orders are contrary to the settled principle of law or provisions of the C.P.C hence, the present second regular appeal is accordingly dismissed.

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Application also stands dismissed.

January 06, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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