

122.

2023:PHHC:142256

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

CR-6415-2023

Date of decision: 07.11.2023

PIPAL SINGH AND ANOTHER

.... Petitioners

Versus

KABAL SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

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

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 01.07.2023 (Annexure P-11) passed by learned Civil Judge (Junior Division), Ferozepur, whereby the application filed by the petitioners-defendants for setting aside the ex-parte order dated 09.12.2022 has been dismissed.

2. The brief facts, as culled out from the paper book, are that the respondent-plaintiff filed a suit for permanent injunction for restraining the petitioners-defendants from forcibly dispossessing the plaintiff from the suit property, as mentioned in the plaint. The defendants-petitioners appeared in the Court, filed written statement, but vide order dated 04.07.2022, they were proceeded against ex-parte. It is submitted that the petitioners were misguided by their counsel at the trial Court as no specific date was informed to them. An application was moved for setting aside the ex-parte order dated

04.07.2022, which was allowed vide order dated 27.09.2022, however, with costs of Rs.1,000/- to be paid to the plaintiff. The case was adjourned to 07.11.2022 for plaintiff's evidence. Thereafter, the case was taken up on 09.12.2022, on which date, neither the defendants appeared nor cost was paid and, therefore, they were again proceeded against ex-parte and the case was adjourned to 23.01.2023. The reason for non-appearance and non-payment of costs by the petitioners-defendants on 09.12.2022 was stated that as petitioner No.1-Pipal Singh had fallen down from the stairs of the house and he sustained injuries, his son i.e. petitioner No.2-Shamsher Singh alongwith others brought Pipal Singh to Ayurveda Centre at Bikaner (Rajasthan) for his treatment. The medical record of petitioner No.1 is at Annexure P-9. The petitioners moved an application on 20.03.2023 for setting aside the ex-parte order dated 09.12.2022, but the same was dismissed vide order dated 01.07.2023.

3. Learned counsel for the petitioners submits that non-appearance and delay in depositing the costs was neither intentional nor deliberate, but due to the injuries suffered by petitioner No.1.

4. I have heard the submissions of learned counsel for the petitioners and have gone through the paper book.

5. Vide order dated 27.09.2022, the application moved by the petitioners-defendants for setting aside the ex-parte order dated 04.07.2022, was allowed and the petitioners-defendants were ordered to join proceedings, however, on payment of costs of Rs.1,000/- to the plaintiff, and the case was adjourned to 07.11.2022 for evidence of the plaintiff and for payment of costs. On 09.12.2022, neither the defendants appeared nor cost was paid and,

they were again proceeded against ex-parte. The plea taken was that petitioner No.1 was taken to Ayurveda Centre at Bikaner (Rajasthan) for his treatment, but no record was produced in this respect. The petitioners have relied on two prescription slips (Annexure P-9), both issued from the Punjab Health Systems Corporation, CHC, Mamdot. One prescription slip is of dated 07.12.2022 where the diagnosis is complain of backache and advice of x-ray spine. On asking, learned counsel for the petitioners submitted that no such x-ray was got conducted. Another prescription slip is dated 27.09.2023 and the diagnosis is severe backache and swelling feet. There is no other medical record.

6. This Court is of the view that if petitioner No.1 fell ill, petitioner No.2 definitely could contact the counsel or appear in the Court. The version of the petitioners is definitely an afterthought. The party, who does not come to the Court with clean hands, is not entitled for any relief. It is the duty of each and every stakeholder to maintain the sanctity of the Court. No person can be allowed to delay the proceedings of the court for any reason.

7. I do not find any ground for interference in the impugned order. The revision petition is dismissed. However, the petitioners-defendants are allowed to join proceedings at this stage.

(GURBIR SINGH)
JUDGE

November 7, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No