

CR-7410-2023

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

Sr. No.135

CR-7410-2023

Date of Decision: 08.12.2023

ANIL AGGARWAL AND ANOTHER

....Petitioners

Versus**BRIJESHWAR SAROOP**

....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Rajiv Katari, Advocate
for the petitioners.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 20.11.2023 (Annexure P-14), passed by the court below, whereby an application of the petitioners (who are defendants before the Court below), for setting aside of the *ex parte* proceedings and allowing them to join the proceedings, had been dismissed.

Keeping in view the nature of the impugned order, at this stage, this Court deems it appropriate to dispose of the revision petition, without issuing notice to the respondent.

Learned counsel for the petitioners heard.

Facts, as culled out from the paperbook are that initially Brijeshwar Saroop, respondent, had filed a suit against petitioner No.1, Anil Aggarwal and his son Gaurav Aggarwal, for issuance of permanent injunction, to restrain them for making any kind of interference in the peaceful ownership/proprietary possession of the plaintiff over agricultural land, as detailed in the headnote of the plaint.

When the case was at the stage of rebuttal evidence and was fixed for 16.10.2023, an application was filed by learned counsel for the respondent/plaintiff, for summoning of the witnesses during the course of rebuttal evidence. However, reply was intended to be filed to the said application and the case was adjourned for 17.10.2023, for filing reply to the said application.

However, it is now submitted by learned counsel for the petitioners that this date was overlooked by the petitioners and they thought since the case was being taken up and adjourned from one Monday to another Monday, the case is now fixed for 23.10.2023 and thus they could not make appearance before the Court below on 17.10.2023.

Furthermore, it is submitted that as soon as petitioner No.2, who is also an Advocate, came to know about the *ex parte* proceedings having been conducted by the Court below, an application was filed 18.10.2023, to join the proceedings.

It is further submitted that the said application, to join the proceedings was dismissed by the Court below, vide the impugned order, while considering about there to be intentionally not making appearance on the date fixed. Now, the case is stated to be fixed for *ex parte* arguments for 01.12.2023.

On query by the court, it has been disclosed by learned counsel for the petitioners that an application which was filed for summoning of the witnesses, for leading rebuttal evidence, on 16.10.2023, the same still remains to be adjudicated and no order has been passed upon the same and the case has been fixed for arguments.

On further query, it has been disclosed that after the *ex parte*

CR-7410-2023

proceedings were conducted against the present petitioners, no further proceedings had been conducted in the present case and simply the case has been fixed for *ex parte* arguments.

Keeping in view the aforesaid fact situation, it shall not be appropriate to reach the conclusion about there to be intentional running away from the Court proceedings. Since, the case was being adjourned from one Monday to another Monday, as submitted, there can be genuine reason for taking the impression about the date fixed to be 23.10.2023 instead of 17.10.2023. Even, it has been observed by the court below that in what manner, the petitioner came to know about *ex parte* proceedings having conducted on 18.10.2023.

In this regard, suffice to make mention that one of the petitioner is an Advocate practicing in the same Court premises and in these circumstances, the knowledge can be very evident of passing of an adverse order against them and an application for setting aside of the *ex parte* proceedings had been filed without any delay.

From the impugned order, it is evident that there was anxiety on the part of the court below, for disposal of the case and therefore, reached the conclusion that the petitioner had not made appearance only for the purposes of delaying the proceedings. However, the suit, as such, have also not proceeded further and therefore no useful purpose will be served. It is always appropriate if the parties contest the case and the matter is disposed of on merits with the assistance of both the sides.

Otherwise, also, the petitioner could have joined the proceedings at any stage, since in between no proceedings have been conducted,

CR-7410-2023

In view of the same, the impugned order is hereby set-aside and the Court shall further conduct the proceedings from the stage qua which the case was pending for 17.10.2023.

On further query, it has been disclosed by learned counsel for the petitioners that the next date fixed before the Court below is 18.12.2023.

In view of the same, the petitioners shall make appearance before the Court below on 18.12.2023 and further proceedings in view of the aforesaid shall be conducted by the Court below.

In view of the aforesaid terms, the revision petition is hereby accepted and is disposed of.

(ARCHANA PURI)
JUDGE

08.12.2023
Sonu

Whether speaking/reasoned : Yes

Whether reportable : Yes/No