



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-265-2020(O&M)
Date of Decision: August 14, 2024

M/s Flint Group India Pvt. Ltd.
...Petitioner

Versus

Parveen Khanna
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Manoj Kumar Sood, Advocate
for the petitioner.

Mr.Kulbushan Sharma and Mr.Abhishek Sharma, Advocates
for the respondent.

ARCHANA PURI, J.

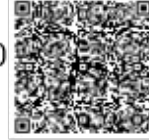
Challenge in the present revision petition is to the orders dated 09.10.2019 (Annexure P-12), 06.05.2019 (Annexure P-7) and 18.11.2019 (Annexure P-13), passed by learned trial Court, during the pendency of the suit.

In pursuance of the notice issued, respondent made appearance through counsel.

Learned counsel for the parties heard.

The facts germane, to be noticed, are as follows:-

That, initially, respondent-plaintiff Parveen Khanna had filed a suit for recovery of Rs.15,75,000/- and also sought declaration against the



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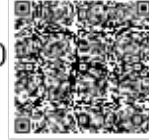
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petitioner-defendant. During the pendency of the said suit, an application was filed, at the instance of the respondent-plaintiff for production of documents and thereupon, order of allowing of the application was passed on 16.01.2019, which is reproduced, as herein given:-

“Reply not filed however, counsel for defendant suffered a statement on oath to the effect that he does not want to file reply to the application under Section 151 CPC filed by plaintiff. In view of the above arguments heard and application at hand is allowed. Defendant is directed to furnish the deficit documents on the Court file as well as to provide sufficient copy to the plaintiff. It shall be first and last opportunity. However, cost of Rs. 500/- is also imposed upon the plaintiff for moving this application at a belated stage, as documents in question were furnished on 16.08.2018 and application was moved on 04.12.2018. Cost be deposited in DLSA. Now to come upon 29.01.2019 for compliance.”

No compliance was made by the defendant and further, on 07.03.2019, the compliance was not made and the case was adjourned to 27.03.2019 for evidence of the plaintiff and further, last opportunity was given to the plaintiff to close the evidence. Neither the documents were filed, nor the plaintiff had paid the cost imposed and subsequently, for submission for deficit documents by the petitioner-defendant, the case was adjourned for 23.04.2019 and furthermore, on 06.05.2019, the cost was not paid by the respondent-plaintiff and even, the defendant had not made appearance. The case was called twice and ultimately, the petitioner-defendant was proceeded against ex-parte.

Thereafter, an application for setting aside the ex-parte order was filed. Notice of the same was given to the plaintiff-respondent. When the case was fixed for filing of the reply to the said application on



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22.07.2019, following order was passed:-

“Reply to the application for setting aside exparte orders dated 06.05.2019 not filed by plaintiff. Adjournment sought by for compliance of order dated 16.01.2019. Heard. Allowed, subject to the cost of Rs. 2000/- to be paid by defendant to plaintiff. Now, to come up on 05.08.2019 for filing reply on above said application by plaintiff as well as for compliance by defendant. It shall be the last opportunity. Application for setting aside exparte order shall not be adjudicated till compliance is made by defendant.”

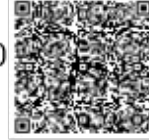
The case was adjourned further for 05.08.2019. Then, on 27.09.2019, the parties had made appearance in person and following order was passed by learned trial Court:-

“Cost of Rs. 2000/- not paid by defendant to plaintiff. Reply to the application for setting aside exparte orders dated 06.05.2019 not filed by plaintiff. Joint adjournment sought by parties for compliance of order dated 16.01.2019. Heard. Allowed. Now, to come up on 09.10.2019 for filing reply on above said application by plaintiff as well as for compliance by defendant and payment of cost. Application for setting aside exparte order shall not be adjudicated till compliance is made by defendant. Last opportunity stands intact.”

The case was adjourned to 09.10.2019. On 09.10.2019, the order passed is reproduced, as herein given:-

“Fresh vakalatnama filed by Sh. S.C.Bahana, Advocate for plaintiff. His presence is marked.

Today the case was fixed for compliance on behalf of the defendants for furnishing documents as ordered by the court vide order dated 16.01.2019, however, after marking presence in the court in the morning counsel for defendant has not appeared again in the court. It is already 3.00 P.M. and no further wait is justified even cost of Rs. 2000/- has not been paid. Perusal of the file shows that defendants has a very casual approach to the court as well as to this matter, therefore, he is not entitled for any leniency, accordingly defence of defendants is hereby struck off. Now, to come up on 18.10.2019 for exparte evidence on behalf of plaintiff, at own



responsibility.”

On the next fixed i.e. 18.10.2019, following order was passed:-

“One witness is present and has tendered his affidavit of examination in chief as Ex.PW1/A . No other ex parte evidence of plaintiff is present. Adjournment sought. Heard. Allowed. At this stage, counsel for defendant Sh. B.S. Yadav has appeared in Court and stated at bar that on 09.10.2019 his application for setting aside ex parte order dated 06.05.2019 was fixed, however, on that day defence was struck off and no order was passed on his application. Heard. Perusal of file shows that defendant was directed to make compliance of order dated 16.01.2019 and directed to make payment of cost of Rs. 2000/- to the plaintiff, however, on 22.07.2019, 27.09.2019, 05.08.2019 and 09.10.2019 compliance was not made by the defendant despite effective opportunities and even cost was not paid. Therefore, for non payment of cost, defence of the defendant was struck off u/s 35 B of Civil Procedure Code, 1908 on 09.10.2019 and today it is made clear for all intents and purposes that even the application moved by the defendant for setting aside ex parte order dated 06.05.2019 stands dismissed in default for failing to make compliance and not been able to show bonafide intention. Order dated 09.10.2019 stands modified to this effect. Now to come upon 12.12.2019 for remaining ex parte evidence of plaintiff.”

The perusal of the aforesaid orders reveals that it was during the pendency of the application filed for setting aside of the ex-parte order, the Court had proceeded further and had given the mind that firstly, comply with the order of furnishing of the documents and thereafter, vide order dated 09.10.2019, the defence of the defendant was struck off, for non-payment of costs and furthermore, on this premise, the application, without taking reply, for setting aside of the ex-parte order, was dismissed in default, for failing to make compliance.

Somewhere in the orders, the presence is marked of counsel for



the defendant and somewhere, it is not so mentioned. Even, the orders passed are cryptic, not making appropriate sense, with regard to the proceedings, for which, the case is being adjourned.

Once, the application for setting aside of the ex-parte order, as such, is pending, the Court, ought not to have insisted for furnishing of the documents, at first instance.

Looking at the aforesaid fact situation, the present revision petition is hereby allowed and the impugned orders are set aside. The parties are directed to make appearance before learned trial Court on 02.09.2024. On appearance of the parties, if the date already fixed is far off, learned trial Court has the option to prepone the same and decide the application for setting aside of the ex-parte order and proceed further, in accordance with law.

August 14, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No