

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

121

CR-578-2024 (O&M)
Date of decision:13.03.2024

Jaspreet Singh & another

... Petitioners

Vs.

The Bhaika Bagh Coop. Society Ltd. & others ... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Siddharth Gupta, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by the petitioners/defendants No.6 and 7 against the order dated 16.01.2024 (Annexure P-1) passed by the Additional Civil Judge (Sr. Division), Phul, District Bathinda, whereby an application dated 18.12.2023 filed by the petitioners/defendants No.6 and 7 for setting aside the ex-parte proceedings qua them as per order dated 19.08.2016 passed by the Additional Civil Judge (Sr. Division), Phul has been dismissed.

2. Brief facts as per revision petitioners, which are material for adjudication of the present revision petition are that plaintiff/society through its Secretary (respondent No.1 herein) filed a suit for declaration to the effect that the plaintiff/society is the owner of the land measuring 207 kanals 1 marla as detailed in the head note of the plaint as per jamabandi for the year 2011-12 situated in the revenue limits of village Dayalpura Bhaika, District Bathinda. Plaintiff has further sought

declaration to the effect that the petitioners as well as the proforma respondents have no right or share in the suit land and the sale deeds executed by Jatinder Kaur – respondent No.5 are illegal, null and void and are not binding on the rights of the plaintiff/society and accordingly are liable to be set aside along with the mutations sanctioned on the basis of the above said sale deeds. It is alleged that the plaintiff/society had also earlier filed Civil Suit No.82 dated 17.04.1980 qua the same suit property and the same was dismissed.

3. After issuing notice of motion, petitioners had appeared in person before the trial Court on 24.09.2015 and when they contacted with respondent No.1 about filing of the present suit, they were informed that the plaintiff/society would withdraw the suit in question on the next date of hearing. Accordingly, the petitioners did not appear before the trial Court after 24.09.2015 and thereafter on 19.08.2016, the petitioners were proceeded against ex-parte. Feeling aggrieved of the said order, the plaintiff/respondent No.1 had preferred an appeal before the Appellate Court and vide order dated 12.01.2023, the Appellate Court had disposed of the same and remanded the *lis* to the trial Court with a direction to give specific issue wise findings after giving reasonable opportunities to the parties to lead further evidence. Pursuant to the order passed by the Appellate Court, the matter was taken up before the trial Court on 20.02.2023 and notice was issued to the plaintiff as well as the remaining defendants for 01.03.2023. The case was repeatedly adjourned for appearance of the remaining defendants. Petitioner No.1 had appeared before the trial Court on 02.05.2023 and the matter was adjourned to

24.05.2023, on which date, after inspecting the record, the petitioners came to know about the passing of the ex-parte order dated 19.08.2016 against them. Immediately thereafter, the petitioners filed an application for setting aside the ex-parte proceedings dated 19.08.2016 along with filing the written statement to the main civil suit. Respondent No.1/plaintiff filed its reply to the said application and had pleaded that the application was beyond the period of limitation and prayed for dismissal of the same.

4. The trial Court dismissed the said application vide the impugned order dated 16.01.2024. Being aggrieved of the said order, the present revision petition has been filed by the petitioners/defendants No.6 and 7 before this Court.

5. Learned counsel for the petitioners has contended that the Appellate Court while remanding the matter back to the trial Court had given a direction to give specific issue wise findings after affording reasonable opportunities to the parties to lead evidence. The petitioners were not aware about the passing of the ex-parte proceedings and on coming to know about the same, they have moved aforesaid application for filing of the written statement and for setting aside the ex-parte proceedings. As the matter was remanded, the trial Court was duty bound to allow the petitioners to contest the suit on merits.

6. I have heard learned counsel for the petitioners and have perused the record.

7. Perusal of the impugned order reveals that the trial Court while dismissing the application has held that the grounds taken by the

petitioners in the application are not tenable or reasonable, rather the same was filed to start *de novo* proceedings in the case which was pending at the stage of rebuttal evidence, if any and arguments. Mere saying that they were not aware of the ex-parte proceedings, they cannot be allowed to restart the proceedings.

8. Though there is no infirmity in the impugned order, yet it will be appropriate, if in the interest of justice, one effective opportunity is given to the petitioners/defendants No.6 and 7 to join the proceedings and to file the written statement. The other party can be well compensated with costs. Accordingly, the impugned order is set aside. The trial Court is directed to grant one effective opportunity to the petitioners/defendants No.6 and 7 to file written statement subject to payment of costs of Rs.15,000/- to be paid to the Poor Patients' Welfare Fund, PGIMER, Chandigarh.

9. Revision petition is allowed in the aforesaid terms.

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

(SUKHVINDER KAUR)
JUDGE

13.03.2024
harjeet

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |