

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7848 of 2023
Date of Decision:09.01.2024

Harminster Kaur and another

....Petitioners

Versus

Smt. Mohinder Partap Singh @ Mohinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ghulam Nabi Malik, Advocate,
for the petitioners.

SUDEEPTI SHARMA, J. (Oral)

1. The challenge in the present petition is to the impugned order dated 01.08.2017 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Chandigarh, whereby the application filed by the petitioners/defendants under Order IX Rule 13 CPC for setting aside *ex parte* judgment and decree dated 17.12.2015 (Annexure P-1) has been dismissed and further challenge is to the judgment dated 16.08.2023 (Annexure P-5) passed by the learned Addl. District Judge, Chandigarh, whereby appeal filed by the petitioners/defendants against the order dated 01.08.2017 has also been dismissed.

2. Learned counsel for the petitioners/defendants contends that Shri Ranjan Lakhanpal, Advocate was appearing on behalf of the

petitioners/defendants from the very beginning and the case was pending for service of respondents for a long time and on 20.05.2014 petitioner No.1/defendant No.1 and on 01.07.2014 petitioner No.2/defendant No.2 were proceeded against *ex parte* for non-appearance and in the mid of May 2014 the counsel for the petitioners/defendants told the husband of petitioner No.1/defendant No.1 to engage a local counsel in the District Courts since Mr. Ranjan Lakhanpal, Advocate was practicing in the High Court and he would be attending important proceedings of the case only. Since the counsel did not appear, therefore the petitioners were proceeded against *ex parte*.

3. I have heard learned counsel for the petitioners and perused the whole record of the case.

4. A perusal of the impugned order shows that petitioner No.1/defendant No.1 was proceeded against *ex parte* on 20.05.2014 and petitioner No.2/defendant No. 2 was proceeded against *ex parte* on 01.07.2014. Thereafter, neither the petitioners nor their counsel put in appearance and *ex parte* judgment and decree was passed on 17.12.2015 and the execution petition of the said *ex parte* judgment and decree was passed on 03.03.2016 in which the Court issued warrants of possession and the possession was handed over to the decree holders on 18.04.2016. Therefore, it cannot be believed that the petitioners/defendants had no knowledge about the proceedings of the case from 20.05.2014 till 07.06.2016 i.e. for a period of almost two years.

5. A perusal of the judgment further shows that the trial Court perused the zimni orders also and it was observed by the trial Court that even after the petitioners/defendants were proceeded against *ex parte* on

20.05.2014 and 01.07.2014 and the *exparte* judgment and decree was passed on 17.12.2015, it is highly unbelievable that the petitioners/defendants did not know the status of their case for such a long time.

6. A perusal of the judgment further shows that it is not the negligence on the part of the Advocate but also on the part of the petitioners/defendants who did not bother about their case after engaging the counsel.

7. In view of the same, I do not find any infirmity in the impugned order dated 01.08.2017 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Chandigarh, whereby the application filed by the petitioners/defendants under Order IX Rule 13 CPC for setting aside *ex parte* judgment and decree dated 17.12.2015 (Annexure P-1) was dismissed and the judgment dated 16.08.2023 (Annexure P-5) passed by the learned Addl. District Judge, Chandigarh, whereby appeal filed by the petitioners/defendants against the order 01.08.2017 was also dismissed. Consequently, the present petition is dismissed.

8. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

January 09, 2024

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	Whether reportable	:	Yes/No