



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR-5799-2019 (O&M)  
Reserved on: 12.05.2025  
Date of decision: 02.06.2025

MAIMUNA @ MEMUNA AND ANOTHER

..Petitioners

Versus

ZAKIR HUSSAIN AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate  
with Mr. Varun Parkash, Advocate  
for the petitioners.

None for the respondents.

**ANIL KSHETARPAL, J.**

**I. Brief facts of the case:-**

1. The petitioners assail the correctness of orders passed by the Courts below while dismissing their application for setting aside the ex-parte judgment and decree.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The civil suit titled as Zakir Hussain and others Vs. Maimuna and others was pending in the Civil Court at Mewat. The defendants engaged Sh. Haroon Khan as their counsel, who was subsequently selected as a Civil Judge/Judicial Magistrate in State of Rajasthan. He handed over the pending cases to his brother-in-law Mohammad Ibrahim. The defendants were proceeded against *ex-parte* on 20.12.2014 in pending suit, which was decreed within a period of 23 days on 30.11.2014. In response to the plaint,



joint written statement was already part of the record. They filed an application for setting aside *ex-parte* decree on 26.11.2024 i.e. within a period of 13 days from the date of decree through Sh. Tahir Hussain, Advocate. Subsequently, Sh. K.L. Sharma, Advocate, was engaged by the petitioners to represent in their cause, who entered appearance in the application on 05.06.2015. The petitioners claim that after the selection of Sh. Haroon Khan as a civil judge, they were not informed and hence the *ex-parte* decree should be set aside. The defendants contested the application.

## II. Issues framed by the trial Court:

4. The trial Court has culled out the following issues:-

*“1. Whether ex parte order dated 20.10.2014 and ex parte judgment and decree dated 13.11.2014 are liable to be set aside on the grounds mentioned in the application? OPA*

*2. Whether the application of applicants is not maintainable? OPR*

*3. Whether the applicants have no locus standi to file the present application? OPR*

*4. Whether the applicants have not come with clean hands before this Court and have concealed the true and material facts from this Court? OPR*

*5. Relief.”*

## III. Evidence adduced:

5. The petitioners examined AW-1 Sh. Adil son of Sh. Zakir Hussain and AW-2 one of the applicant. They also produced affidavit Ex.A-1, sworn in by Mohammad Ibrahim.

6. On the other hand, RW-1 Zakir Hussain deposed on behalf of respondents and various documents were produced.

## IV. Reasons recorded by the Courts below:-

7. Both the Courts dismissed the application for the following reasons:-



- i. Mohammad Ibrahim has not been examined.
- ii. Reasons for absence of Mr. K.L. Sharma, Advocate, have not been disclosed.
- iii. The applicants have changed their stand.

8. The respondents have not entered appearance despite receipt of notice.

**V. Analysis and Discussion:-**

9. This Bench has heard the learned Senior counsel representing the petitioners at length and with his able assistance perused the paperbook.

10. In the considered opinion of this Court, the Courts have erred in taking a myopic view while examining the application.

11. In the application for setting aside *ex-parte* decree, it was submitted by the petitioners that Sh. Haroon Khan handed over the files to Sh. K.L. Sharma, Advocate but when the petitioner appeared in evidence, she explained that the files were handed over by Sh. Haroon Khan to his brother-in-law Mohammad Ibrahim. In substance, the original advocate engaged by the petitioners was selected as a Judge and therefore, he stopped appearing in the Courts. Hence, the Court should have issued notice to the petitioners. Undoubtedly, there is some variance in the evidence and the reasons given in the application for their absence from the Court proceedings, however, the Court should have examined the substance of the reason disclosed by the petitioners, which is to the effect that their previous counsel Sh. Haroon Khan stopped appearing in the Courts on account of his selection as a judicial officer, hence, absence of the petitioners was unintentional.

12. The Courts have also erred in observing that affidavit of



Mohammad Ibrahim has been produced but he has not been examined. In this case, Mohammad Ibrahim may be reluctant to appear in Court as a witness because he is a practicing advocate.

13. Moreover, the Courts have overlooked that one of the decree holders namely Sh. Adil while appearing as AW-1 on behalf of the petitioners in the Courts below has stated that he has no objection if the *ex-parte* decree is set aside. In such circumstances, the Court should have given an opportunity to the petitioners to defend the case while setting aside the *ex-parte* decree.

14. The trial Court also erred in relying upon the fact that Sh. K.L. Sharma, Advocate, filed a power of attorney on behalf of the petitioners on 23.08.2012, because at that time the suit was pending. Subsequently, the petitioners engaged Sh. Haroon Khan to represent them in the pending suit. They then engaged Sh. Tahir Hussain, Advocate, to file application for setting aside *ex-parte* decree. Thereafter, they once again engaged Sh. K.L. Sharma, Advocate, on 05.06.2015 to represent their cause in the Court, hence, the Courts have erred in observing that Sh. K.L. Sharma, Advocate, was originally representing the petitioners during the pendency of the suit.

15. The Courts have also erred in observing that reasons for absence of Sh. K.L. Sharma, Advocate, on 20.10.2024 have not been disclosed. In the year 2014, the petitioners were represented by Sh. Haroon Khan, Advocate, and not by Sh. K.L. Sharma, Advocate. Hence, reasons for absence of Sh. K.L. Sharma, Advocate, were not required to be disclosed to the Court.

**VI. Decision:-**

16. Keeping in view the aforesaid reasons, the revision petition is



allowed. The impugned orders passed by the Courts below are set aside while allowing the application filed by the petitioners to set aside the *ex-parte* decree.

17. The trial Court is directed to restore the suit to its original number and proceed with the case in accordance with law.

18. All the pending miscellaneous applications, if any, are also disposed of.

**02<sup>nd</sup> June, 2025**

*Ayub*

**(ANIL KSHETARPAL)  
JUDGE**

*Whether speaking/reasoned* : *Yes/No*

*Whether reportable* : *Yes/No*