
(2014) 11 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : CR No. 7217 of 2014

Bhola Singh Jai Parkash Construction Ltd. and Others	APPELLANT
Vs	
Dighaul and Company Pvt. Ltd.	RESPONDENT

Date of Decision : 04-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2015) 178 PLR 273

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : Ram Bilas Gupta, Advocate for the Appellant; Sanjay Verma, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Jaswant Singh, J.

1. Defendants are in revision before this Court aggrieved against the order dated 7.5.2013 (P-6) passed by the learned Civil Judge (Sr. Divn.), Faridabad whereby their application for setting aside ex-parte order dated 24.09.2007 and ex-parte judgment and decree dated 19.01.2009 has been dismissed and the findings thereof have been affirmed by the learned Additional District Judge, Faridabad vide judgment and decree dated 21.3.2014. Learned Counsel for the petitioners has vehemently argued that the petitioners were proceeded ex-parte on account of non appearance of their counsel and some another counsel had made statement on their behalf who was not authorised by them. It is further argued that they came to now about the ex-parte proceedings and they approached the court and moved application in question and give cogent reasons for not appearing before the Court but the learned Courts below have erred in passing the impugned judgment wrongly and dismissed their application. In support of his contentions he has placed reliance upon Anita and Others Vs. State of Haryana, , Ramji Gupta and Another Vs. Gopi Krishan Agrawal (D) and Others, , Raj Bala Vs. Krishna Kaul--> and M/s. N.K. Electronics Vs. Narinder Kumar, .

2. On the other hand learned Counsel for the Caveator/respondent (plaintiff) has vehemently argued that the proceedings under Order 9 Rule 13 CPC have been filed only to prolong the execution proceedings as they have not been able to show any sufficient cause for setting aside the ex parte order dated 24.09.2007 as well as ex-parte judgment and decree dated 19.01.2009.

3. After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and the same deserves to be dismissed.

4. Perusal of the record shows that the present suit was filed on 17.1.2003 for recovery of Rs. 5,65,825/- and thereafter the petitioners/defendants appeared through their counsel and filed their written statement on 24.9.2007. When the case was fixed, for evidence of the defendants/petitioners, Sh. Manish Sharma, Advocate appeared on their behalf and made statement before the Court that he has no instructions to appear on their behalf and it is on his statement, that the petitioners were proceeded ex-parte which ultimately resulted into passing of the ex-parte judgment and decree dated 19.01.2009. The plea of the petitioners that they had never authorised Sh. Manish Sharma, Advocate to appear on their behalf and another fact that they had engaged one Mr. Sanjay Sharma, Advocate to appear on their behalf is only an afterthought to wriggle out of the ex-parte judgment and decree. A perusal of the Vakalatnama which is proved on record Ex. A-2 shows that the same was signed by Sh. Sanjay Sharma as well as Sh. Manish Sharma, Advocates. It is by now settled position of law that an advocate engaged by any party authorising him to appear on his behalf can further authorise any other advocate to appear for him if he is prevented by a reasonable cause from appearing and conducting proceedings of hearing. Although, technicalities should never come in way of substantial justice, however, it is imperative upon the party invoking the equity to show that he has been fair in the proceedings throughout. This Court does not find any equity in favour of the petitioners and consequently no interference is warranted in the impugned orders. The judgments relied upon by the learned Counsel for the petitioners are in no way of any help to them as they are based upon their own facts and circumstances and are not applicable to the facts and circumstances of the present case especially when it is an admitted fact that they had engaged Sanjay Sharma, Advocate and there is no evidence on behalf of Mr. Sanjay Sharma, Advocate that he had not authorised Mr. Manish Sharma Advocate to appear on his behalf. In view of the above, finding no merit in the present revision petition the same is hereby dismissed with cost of Rs. 10,000/- to be deposited with Haryana State legal Services Authority, Faridabad Branch.