courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(2016) 04 P&H CK 0258

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No.806 of 2016

Brij Mohan (deceased) through LRs Smt. Saroj and others — APPELLANT

Vs

Y.P. Jauhari and others — RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7

Citation : (2016) 4 PLR 89

Hon'ble Judges : Darshan Singh, J.

Bench : Single Bench

Advocate : B.R. Vohra, Advocate, for the Appellant; Y.P. Jauhari, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Darshan Singh, J.—The present revision petition has been preferred against the order dated 15.01.2016, passed by the learned Civil Judge (Senior Division), Nuh (Mewat), vide which the application moved by the petitioners/ defendants under Order 9, Rule 7 of the Code of Civil Procedure, 1908 (for short the ''CPC'') for setting aside the ex parte proceedings dated 08.01.2016, has been dismissed.

2. Notice of this revision petition was issued to the respondents. Respondent No.1 Mr. Y.P. Jauhari has appeared in person. The other respondents are only the proforma respondents, so the notice to them was dispensed with.

3. Learned counsel for the petitioners contended that the petitioners were proceeded against ex parte on 08.01.2016 as their counsel pleaded no instructions. The application was moved for setting aside the ex parte proceedings only on the next date. Thus, he contended that the application has been wrongly dismissed.

4. On the other hand, respondent No.1 contended that the present revision petition has become infructuous as the petitioners have already been allowed to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/brij-mohan-deceased-through-lrs-…

join the proceedings. They have even adduced their evidence. He further contended that Mr. Amit Goel was very much present in the Court complex on that day and on his instructions, his counsel did not appear. He further contended that even at the stage of summoning, they did not appear for two years and when they were proceeded against ex parte, they put in appearance on the next day. Thus, he contended that in view of the conduct of the petitioners their application has been rightly dismissed by the learned trial Court.

5. I have duly considered the aforesaid contentions.

6. No doubt, in the impugned order the learned trial Court has categorically mentioned that the counsel for the petitioners was present in the Court on 08.01.2016 and even one witness was examined in his presence. But after meeting Amit Goel in the Court complex, he pleaded no instructions. The learned trial Court observed that the defendants were very much present in the Court on 08.01.2011 and they instructed their counsel not to appear in the Court on their behalf. The learned trial Court also observed that petitioners have taken the wrong stand that wrong date was noted.

7. Be that as it may, this fact is not disputed that the application for setting aside the ex parte proceedings has been moved without any loss of time. It is also not disputed that the lis between the parties should be decided on merits rather than on technicalities. This fact has not been disputed that the petitioners have already been allowed by the learned trial Court to join further proceedings but the statement of the plaintiff was recorded by the learned trial Court in the absence of petitioners and they could not cross-examine him. They can only be allowed to cross-examine the plaintiff if the ex parte proceedings are set aside. Respondent No.1 has highlighted the conduct of the petitioners. So, he can be well compensated with cost due to the inconvenience caused to him as a result of the conduct of the petitioners. But it will not be justified to decline them the due opportunity to defend the suit.

8. Thus, keeping in view my aforesaid discussion, the present revision petition is hereby allowed. The impugned order date 15.01.2016 is hereby set aside. The application filed by the petitioners for setting aside the ex parte proceedings dated 08.01.2016 is hereby allowed subject to Rs. 5000/- as cost. The cost be paid to respondent No.1/plaintiff in the trial Court.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/brij-mohan-deceased-through-lrs-…