Supreme Court of India
Malkiat Singh & Anr vs Joginder Singh & Ors on 2 December, 1997
Bench: A.S. Anand, V.N. Khare

PETITIONER:
MALKIAT SINGH & ANR.

Vs.

RESPONDENT:
JOGINDER SINGH & ORS.

DATE OF JUDGMENT: 02/12/1997

BENCH:
A.S. ANAND, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 2ND DAY OF DECEMBER, 1997 Present:

Hon'ble Dr. Justice A.S. Anand Hon'ble Mr. Justice V.N. Khare K.K. Mohan, Adv. for the appellants Ujagar Singh, Sr. Adv., and Ms. Naresh Bakshi, Adv. with him for the Respondents.

O R D E R The following Judgment of the Court was delivered: Special leave granted.

The appellants were tried for the murder of one Harpal Singh and on conviction, were sentenced to suffer life imprisonment and to pay a fine of Rs. 1,000/- by the learned special Court, Ludhiana vide judgment dated 1.4.1985. The respondents, it appears, on 16.8.89 filed a suit in the court of learned Sub Judge, 1st Class, Samrala claiming damages from the appellants to the tune of Rs. 1,00,000 /- for deprivation of the income to the family members which they used to get from deceased Harpal Singh. The claim in the suit was contented by the appellants. They filed their written statement and engaged a counsel to defend the suit. The trial court, on the basis of the pleadings of the parties, framed a number of issues. After two witnesss for the plaintiffs in that suit had been examined and cross examined, it transpires that, on 18.11.1991, learned counsel who had been engaged by the appellants herein go defending them in the suit, pleaded "no instructions" before the court. As a result of the counsel pleading no instructions, the appellants were proceeded ex-parte. On 8.2.1992, the learned trial court passed an ex-parte decree against the appellants.

The appellants went to enquire about the proceedings in the case from their counsel. On 6.6.1992 on their enquiry, their counsel informed them that he had pleaded "no instructions" as a result of which they were proceeded ex- parte and the suit had been decreed ex-parte on 8.2.1992. the appellants then engaged another counsel and on 10.6.1992, filed an application under Order 9, rule 13, C.P.C. for setting aside the order dated 18.11.1991 and the ex-parte judgment and decree dated 8.2.1992. While that application was pending adjudication, the appeal filed by the appellants against their conviction and sentence was heard by this Court. On 7.3.1995, the order of conviction and sentence was set aside.

The trial court dismissed the application filed by the appellants under Order 9, Rule 13, C.P.C. on 22.1.1996. their appeal failed before the learned District Judge on 18.10.1996. The High Court dismissed the civil revision petition filed by hem in-limine on 13.12.1996. hence this appeal by special leave.

We have heard learned counsel for the parties in this appeal and perused the record.

There is no denying the fact that the appellants had engaged a counsel to defend them in the civil suit. The counsel for the appellants pleaded "no instructions" but the court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions in the court. it is nobody's case that the counsel informed them after he had reported no instructions to the court. The appellants only came to know about the order dated 18.11.1991 and the ex-parte decree dated 8.2.1992 when they approached their counsel on 6.6.1992. It was within four days thereafter that the appellants filed an application under Order 9, Rule 13, C.P.C. for setting aside the order dated 18.11.1991 and the decree dated .12.1992.

The appellants in their application clearly pleaded that they were neither careless nor negligent and as soon as they learnt about the ex-parte decree dated 8.2.1992 and the order dated 18.11.1991, they filed the application to set aside the order and ex-parte decree. A perusal of the record also reveals that the appellants were neither careless nor negligent in defending the suit. they had engaged a counsel and were following the proceedings. In this fact situation, the trial court, which had admittedly not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when t he counsel reported no instructions. The appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not suffer. In taking this view, we are fortified by a judgment of this Court in Tahil Ram Issardas Sadarangani & Ors. Vs. Ramchand Issardas Sadarangani & Anr. (1993 (Supp.) 3 SCC 256) wherein the bench opined:-

> "It is not disputed in the present case that on March 15, 1974 when Mr. Adhia, advocate withdrew from the case, the petitioners were not present in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. we are of the view, when Mr. Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that t he party in person was not at fault and as such should not be

made to suffer."

In view of what we have said above, this appeal succeeds and is allowed. The order of the trial Court dated 18.11.1991 and the ex-parte decree dated 8.2.1991 and the ex-parted decree dated 8.2.1992 are set aside. we also set aside the order of the District Judge and that of the High Court dismissing the civil revision petition. The case is remanded to the trial court for its disposal in accordance with law. The trial court shall proceed with the case from the stage, where the case was on 18.11.1991. There shall be no order as to costs.