

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-1022-2015

Date of decision: 13.2.2015

Shanti Devi

..... Petitioner

Versus

Tarsem Dass

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Jatinder Singla, Advocate for the petitioner.

R.P. NAGRATH, J.

The petitioner has invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to challenge the order dated 18.12.2014, passed by Additional District Judge, in appeal for setting aside the order dated 8.7.2013 (Annexure P-8) of the trial Court which had dismissed the application of defendant-respondent under Order IX Rule 13 of the Code of Civil Procedure (CPC).

The petitioner instituted a suit for recovery on 14.5.2010, on the basis of promissory note and receipt dated 15.5.2007 which was allegedly executed for a consideration of ₹ 1,00,000/-. The respondent-defendant was served personally in the suit but did not appear. He was

thus, proceeded against *ex parte* on 21.7.2010. Learned trial Court recorded *ex parte evidence* and decreed the suit of petitioner vide judgment dated 11.11.2010 (Annexure P-1).

The defendant-respondent moved an application dated 23.1.2011 (Annexure P-6) under Order IX Rule 13 CPC, for setting aside the *ex parte* judgment and decree. It was stated that respondent was served in the suit but in the meantime, brother-in-law i.e. husband of the sister of defendant-respondent became seriously ill and he had to go to meet his brother-in-law. The summons were kept in the pocket of his apparels and washed out. The petitioner forgot the date fixed in the case. The respondent came to know from the Patwari that an *ex parte* judgment and decree has been passed and his land was going to be attached.

The plaintiff-petitioner filed reply (Annexure P-7) to the said application and opposed the same. It was stated that even if the plea of respondent's brother-in-law being unwell is accepted, the respondent never came to enquire about the case in the Court. The application was also stated to be barred by time.

Learned trial Court framed the following issues from the pleadings of the parties:-

- “1) Whether there are sufficient grounds to set aside the decree dated 11.11.2010? OPA
- 2) Whether the application is within limitation? OPA
- 3) Relief.”

The parties produced their respective evidence and the

learned trial Court held the application to be barred by time and also that there were no sufficient grounds for setting aside the *ex parte* decree.

I have heard learned counsel for the petitioner and carefully perused the orders passed by the Courts below and the paper-book.

Learned counsel for the petitioner contends that ailment of brother-in-law of the defendant-respondent was sought to be proved by producing OPD slip without examining the doctor. It is further contended that the respondent did not attend the Court to enquire about the next date if his version with regard to the ailment of his brother-in-law was correct. It was also contended that the factum of passing of *ex parte* decree allegedly came to be known from the Patwari but Patwari was not examined. Learned Appellate Court has appreciated the above contentions and observed as under:-

“As per the record, the suit was filed on 15.4.10 and the same was decreed on 11.11.2010 i.e. within a period of six months. There is an admission of the appellant/defendant on the file that he was duly served but failed to appear due to illness of his brother-in-law. There is no denial of the fact that he has also examined his brother-in-law in support of his case. The ld. Trial Court has disbelieved the evidence that no proof, in support thereof, has been filed. A OPD slip recorded regarding the same was produced but the ld. Trial court also failed to believe the same on the ground that doctor has not been examined. The ld.

Court, at the same time, has held that proving the fact that he was busy in attending him, is not a valid ground for showing a reason of his absence from the court, but the ld. Trial Court, while passing order, has not kept in mind the basic rule that it is always better to decide controversy on merits then to decline the same on technical ground. In this case, the appellant/defendant has immediately approached the Court i.e. within a period of two months and 20 days after the passing of the ex parte decree against him. So, malafide intention of the appellant/defendant, to delay the proceedings, is not reflected on the record. Had he ever intended to do so, he could have approached the Court after another six months or one year to cause delay. Having liberal approach to get the controversy decided on merits, the Court is inclined to accept it and the respondent can well be compensated with costs. So, the appeal is allowed subject to costs of ₹ 5000/-.....”

It is apparent that respondent also examined his brother-in-law in support of the plea of ailment of his relative and, therefore, the evidence supported by OPD slip has been rightly accepted. The ground of challenge to the impugned judgment of the Appellate Court is that the evidence on record was not enough to hold any sufficient cause for setting aside the *ex parte* decree. No doubt it is always for the defendant-

respondent to prove the allegation but in such kind of cases the burden of proof is little lighter.

In view of the aforesaid factors, I find no ground to interfere in the discretion exercised by the lower Appellate Court on analysis of the evidence while setting aside the order passed by the trial Court. Since the matter has remained pending for a long period, the trial Court is directed to dispose of the suit expeditiously and preferably within a period of 9 months from the date of receipt of certified copy of this order.

Dismissed.

February 13, 2015
rishu

(R.P. NAGRATH)
JUDGE