

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

Civil Revision No.1816 of 2015 (O&M)

Date of decision: 13.03.2015

Darshan Singh

..... Petitioner

Versus

State Bank of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Vikas Kumar, Advocate for  
Mr. R.K. Girdhar, Advocate the petitioner.

**RAJESH BINDAL, J**

The present petition has been filed by the guarantor impugning the order dated 22.11.2011 passed by the learned Additional Civil Judge (Senior Division), Faridkot, whereby the application filed by him for setting aside of ex-parte judgment and decree dated 3.1.2005, was dismissed. Challenge has also been made to the order dated 8.1.2015 passed by the learned Additional District Judge, Faridkot dismissing the appeal against the order dated 22.11.2011 dismissing the application for setting aside the ex-parte judgment and decree.

It is a case in which, undisputedly loan was raised by respondents No.2 and 3 from respondent No.1-State Bank of India. The petitioner was a guarantor. On account of failure to pay the amount, suit for recovery was filed, in which, the petitioner-guarantor was also impleaded as a defendant. He having not appeared, was proceeded against ex-parte. Even respondents No.2 and 3-loanees were also proceeded against ex-parte before the trial court. The learned trial court decreed the suit vide judgment and decree dated 3.1.2005. The original loanees did not have the grievance, as nothing has been mentioned in the present petition as regards any remedy availed of by them against the ex-parte judgment and decree. The petitioner filed application for setting aside of ex-parte judgment and decree on 16.8.2008 on the plea that while getting the Jamabandi for the land owned by the petitioner-defendant No.3 on 7.7.2008 he came to know that the land had

been attached for execution of the decree passed against him. It was thereafter that the application for setting aside of ex-parte judgment and decree was filed. The plea raised in support of the application was that neither the summon was ever served to him nor affixation was made. Hence, the order directing ex-parte proceedings against the petitioner deserve to be set aside. The learned court below while dismissing the application found that the original loanees were duly served. Initially they were represented by a counsel, however, later on, on account of their absence, they were proceeded against ex-parte. The petitioner did not appear despite service. He had full knowledge of the pendency of the proceedings before the trial court. The loanees as well as the petitioner are residents of the same village. The petitioner has not been able to prove the date of knowledge for claiming that the application had been filed within 30 days thereafter. Even the process server was not examined, in support of the plea that summon was never served upon him. Under these circumstances, the learned trial court dismissed the application for setting aside the ex-parte decree. The order was upheld in appeal.

Learned counsel for the petitioner reiterated the submissions made before the learned court below, namely that he was never served and in the absence of due service, the petitioner could not appear and was unable to defend the case against him.

After hearing learned counsel for the petitioner, I do not find any reason to interfere with the impugned order.

As has been noticed by the learned trial court in the order dismissing the application for setting aside of ex-parte decree, that no evidence was led by the petitioner to show that he visited Patwari on 7.7.2008 for getting the Jamabandi from where he came to know about the passing of the ex-parte decree. In support of his plea that the process server never visited his house and no affixation of summons was made, even the process server was not examined. This clearly establishes the fact that the application filed by the petitioner for setting aside the ex-parte decree was highly belated, as the petitioner was proceeded against ex-parte vide order dated 27.7.2000. Thereafter, the ex-parte decree was passed against the petitioner on 3.1.2005. He kept quiet for more than three years after passing of the ex-parte decree and thereafter, he filed the application for setting

aside thereof. This was highly belated. The liability of a loanee and the guarantor is joint and several.

For the reasons mentioned above, I do not find any merit in the present petition.

Dismissed.

**(RAJESH BINDAL)**  
**JUDGE**

13.03.2015

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