

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

CR No.2254 of 2013 (O&M)

Date of decision: 08.12.2015

Vijay Pal

... Petitioner

versus

C.L. Chaudhary

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amandeep Rana, Advocate for
Mr. Satish Goel, Advocate for the petitioner.

Mr. Surinder Sharma, Advocate for the respondent.

K.Kannan, J.

The revision petition is against the dismissal of the application to set aside the ex-parte decree. It was a suit for damages for defamation and after service of notice, the defendant had engaged a counsel to defend himself. He had not filed the written statement after availing to himself several opportunities and hence the defence was struck off on 12.08.2003. The case was adjourned from time to time and he was set ex-parte on 10.11.2005. After setting the defendant ex-parte the Court did not proceed to pass an order, but, the case was adjourned to several dates before a decree was granted on 21.03.2006. When it was put in execution, the defendant claimed that he came to know about the ex-parte judgment on 13.08.2010. He filed an application in the year 2010 to set aside the decree passed in the year 2006.

The trial Court found that the case cannot be treated as a situation when the party had not been served with the notice. If he was engaging a counsel but not filing the statement, the mere contention by him that the counsel did not inform him cannot help him from the consequences of the decree. The Appellate Court examined the records and said that the objection placed before the Appellate Court that the Court did not frame issues and did not afford any opportunity to let in evidence was not made out and the party himself must have

volunteered such a course. It affirmed the decision.

Learned counsel for the petitioner reads out the observations of the Appellate Court that he did not lead any evidence and argues that it was for the Court to frame issues and there is also a ground of appeal that the Court did not grant adequate opportunity to lead any evidence about the adequate reasons why the ex-parte decree would require to be set aside. It is a case where the execution of the decree has secured the return of the whole of the money to the decree holder. The counsel for the respondent states that there is no merit in that application where the petition was filed more than 4 years after the ex-parte decree was passed even without an application under Section 5 of the Limitation Act.

The bar of limitation is formidable and I find no scope for allowing for an opportunity to be given to the defendant who after service allowed himself to be defaulter in not filing the written statement and after suffering a decree comes with an application without even the petition for condoning the delay of filing the application beyond the period of 30 days.

Assuming that the delay can be condoned even without an application in the interest of justice, I would notice that that only contention made is that the lawyer was negligent. The petitioner is better advised to proceed against the lawyer whose negligence had damnified him. There is no scope for entertaining the belated application for a decree which was passed after sufficient opportunities given to the defendant and after the decree was put in execution.

The civil revision petition is dismissed with above observations.

(K.KANNAN)
JUDGE

08.12.2015

kv