

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

CR No. 3267 of 2015 (O&M)

Date of decision : 16.7.2015

Kanwar Singh

.. Petitioner

versus

Shakuntla and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Mange Ram Sharma and
Mr. Pankaj Sharma, Advocates, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 27.1.2015 passed by the learned Court below whereby the application filed by the petitioner for setting aside of ex-parte decree, was dismissed.

Learned counsel for the petitioner sought to argue that the learned Court below has committed material illegality in dismissing the application for setting aside of ex-parte decree simultaneously with dismissal of his application for condonation of delay in filing the application for setting aside of ex-parte decree.

After hearing learned counsel for the petitioner, I do not find any merit in the submissions made.

A perusal of the impugned order passed by the learned Court below shows that ex-parte proceedings were initiated against the petitioner on 19.12.2008 and subsequently ex-parte judgment and decree dated 31.1.2012 was passed. The application was filed on 26.4.2012 for setting aside ex-parte proceedings dated 19.12.2008 and ex-parte judgment and decree dated 31.1.2012 claiming that he was never served in the case. He came to know from Babu Lal on 25.3.2012 regarding passing of ex-parte decree. The application was filed after obtaining copies and engaging counsel. The stand of the decree-holder was that after due service, the petitioner/defendant no.1 had put in appearance through his counsel Sardar Singh Yadav, who had even filed his power of attorney on behalf of

defendant nos. 1 to 6 on 22.12.2006. Thereafter, D. S. Rao, Advocate, appeared on behalf of defendant nos. 3, 4 and 6 and filed written statement on their behalf. Defendant nos. 1, 2, and 5 did not file any written statement and were proceeded against ex-parte. In support of his plea for filing application for condonation of delay in filing of setting aside ex-parte proceedings and consequently the ex-parte decree, the applicant tendered his evidence. However, after filing of affidavit, he never appeared in court. The respondent-plaintiff filed certified copy of the power of attorney executed by the petitioner as Ex. RW1/A. The Court compared the signatures of the petitioner on the pleadings filed by him and the present proceedings as well as the signatures appended by him on the power of attorney already filed. The same were found to be comparable. No evidence was led by the petitioner to rebut the evidence led by the respondent-plaintiff.

With the aforesaid facts on record, the Court came to the conclusion that the factum of pendency of the suit against the petitioner was well within his knowledge and he had himself absented from the proceedings, hence to claim that they came to know about the proceedings on 25.3.2012 was not made out. The Court did not find that any ground was made out to condone the delay in filing the application for setting aside ex-parte proceedings or the decree and as a consequence of that the application was dismissed.

Once the petitioner has not been able to satisfy the court that he had no knowledge about the pendency of the proceedings against him, there was no error in the order passed. The procedure adopted by the Court below cannot said to be erroneous as the learned court below had first decided the application filed by the petitioner seeking condonation of delay in filing the application for setting aside of ex-parte proceedings and after dismissal thereof, as a consequence the application for setting aside of ex-parte proceedings was dismissed.

There is no merit in the present petition. The same is accordingly dismissed.