

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 4519 of 2015
Date of decision : August 28, 2015

Avtar Singh

..... Petitioner

Versus

Lakhbir Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjiv Gupta, Advocate
for the petitioner.

1. Whether reporters of 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?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned orders dated 26.5.2014 and 4.7.2015 for setting aside the ex-parte judgment and decree dated 15.9.2008 whereby application filed under Order 9 Rule 13 CPC has been dismissed and appeal filed against the same also met with the same fate.

Learned counsel for the petitioner-judgment debtor-defendant submits that the civil suit for specific performance of agreement to sell dated 10.9.2005 whereby a vacant plot was agreed to be sold for a valuable consideration of ₹5 lacs and as per the agreement a sum of ₹2.50 lacs was received as earnest money had been decreed. The vendee instituted the suit, aforementioned, and notice of the suit was ordered to be served upon the petitioner-

judgment debtor-defendant for 10.9.2006. He submits that the summons were not accompanied by plaint and the same was refused, accordingly the petitioner-defendant was proceeded ex-parte. After a period of two years the ex-parte judgment dated 15.9.2008 came to be passed whereby the petitioner had been called upon to execute the sale deed on receipt of the balance sale consideration.

He submits that the petitioner-defendant acquired the knowledge about the ex-parte judgment and decree on receipt of summons of execution petition. The trial court as well as the lower appellate court dismissed the application filed under Order 9 Rule 13 CPC on two grounds; one, that the petitioner-defendant had the knowledge of pendency of the suit as he had received the summons, but he deliberately did not put in appearance and second the application was totally barred by the law of limitation. In support of his contentions, he has relied on the judgment of Hon'ble Division Bench of this Court in **Babu Ram Bhatnagar Vs. Satish Kumar Rawal 1992(1)RRR 35** to contend that the compliance of proviso to Order 9 Rule 13 and Order 5 Rule 2 CPC is mandatory in nature.

He further submits that as per ratio decidendi culled out in **Babu Ram Bhatnagar's case (supra)** it has been held that in case the summons were not received, it is not held an effective service, therefore, both the courts below have committed illegality and perversity in rejecting the application. He submits that in case the petitioner-defendant is given an opportunity he would belie the stand of the respondent-plaintiff as he was not ready and willing to perform

his part of the agreement and further that it would result in undue hardship.

I have heard learned counsel for the petitioner-defendant, appraised the paper book as well as case law cited above.

There is no dispute to the ratio decidendi culled out in **Babu Ram Bhatnagar's case (supra)**. It would be apt to refer to the contents of the application whereby the ex-parte judgment and decree has been sought to be set aside. A bald averment in paragraph 7 has been made to the extent that the petitioner-defendant acquired knowledge of the ex-parte judgment and decree on receipt of summons of execution proceedings. Para 7 of the application reads thus:-

“That the defendant came to know of the pendency of the proceedings on receipt of summons in execution proceedings and as such after seeking proper legal advise the instant application is being filed, which is within period of limitation from the date of knowledge.”

As per Article 122 of the Limitation Act, 1963 the limitation to file an application is 30 days from the date of acquisition of knowledge. The acquisition of knowledge would impliedly mean that a party seeking setting aside of the ex-parte decree would not know about date, month and year.

The petitioner-judgment debtor had the knowledge of pendency of the suit as he has admitted to have refused the summons. However, in the entire body of the application, there is no

such averment that summons sent by the court were not accompanied by plaint. Rather, the story coined is that the plaintiff-respondent had managed to procure service by forging his signatures. Thus, the argument raised is contradictory to the stand taken in the application, therefore the ratio decidendi culled out in **Babu Ram Bhatnagar's case (supra)** would not apply to the facts and circumstances of the case. The petitioner-defendant has failed to give any explanation of delay of 1 ½ year in not approaching the Court for seeking setting aside of the ex-parte judgment and decree.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below. The orders under challenge cannot be said to have been passed without jurisdiction. No interference is warranted.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

August 28, 2015
archana