

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CR No. 5144 of 2015

Date of decision : August 14, 2015

* * * * *

Sanjiv Kumar

.....Petitioner

Versus

Bhag Singh and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Rajesh Gupta, Advocate for the petitioner.

* * * * *

1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

This revision petition has been filed against the order dated **20.3.2009** (Annexure P-1) by which the petitioner-defendant no.1 was proceeded ex parte, ex parte judgment and decree dated **03.6.2011** (Annexure P-2) passed by the Civil Judge (Senior Division) Naraingarh and order dated **22.4.2015** (Annexure P-5) passed by the Civil Judge (Junior Division), Naraingarh vide which application of the petitioner for setting aside the ex parte order dated 20.3.2009 (Annexure P-1) and ex parte judgment and decree dated 3.6.2011

(Annexure P-2) has been dismissed.

The respondent-plaintiff had filed a suit for specific performance of an agreement to sell dated 15.1.2008. Despite being served, petitioner-defendant no.1 did not appear on 20.3.2009. Hence he was proceeded ex parte vide order dated 20.3.2009 (Annexure P-1). The trial Court after recording the evidence of the respondent-plaintiff, decreed the suit on 3.6.2011 (Annexure P-2). An application filed by the petitioner-defendant no.1 for setting aside the ex parte decree was dismissed by the trial Court on 22.4.2015 (Annexure P-5). The application was dismissed while making reference to ***Parimal vs. Veena @ Bharti 2011 (2) RCR (Civil) 155 (S.C)*** and ***Arjun Singh vs. Mohindra Kumar and others, AIR 1964 (SC) 993***, where the Supreme Court had observed that there should be a very good and sufficient cause for explanation of non-appearance.

The petitioner-defendant no.1 had appeared before the Court on 15.1.2009 and thereafter on 20.3.2009 when the case was posted for filing of written statement, he failed to appear and was proceeded ex parte. The assertion of the petitioner-defendant no.1 that he was mentally disturbed since 2005 and due to this reason he could not approach the Court was rejected as it was merely a bald statement and was not accompanied by sufficient evidence to prove the said fact. The case was posted for 22.7.2009 for recording ex parte evidence of the respondent-plaintiff. There is no explanation as to why the petitioner-defendant no.1 did not choose to appear even

after 20.3.2009 till the date the judgment was pronounced by the trial Court on 3.6.2011. There is no explanation for the delay in filing the present revision petition. The petitioner-defendant no.1 has taken his own sweet time to file this revision petition after a gap of almost six years. A Coordinate Bench of this Court in the case of **Bhagirath vs. Rukna Devi and others, 2015 (1) ICC 503** while dealing with the question of limitation had upheld the order of the lower Appellate Court dismissing the application under Order 9 Rule 9. In paragraph 8, it was observed as under:

“8. The object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. These are meant to see that the parties do not resort to dilatory tactics. In *Indian Council for Enviro-Legal Action vs. Union of India and others, 2011 (8) SCC 161* also, it was noticed that the conduct of the parties is to be taken into consideration. The relevant observations in *Indian Council's case(supra)* read as under:-

“216. In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no

wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

218 to 222 xxx xxx xxx

223. The other aspect which has been dealt with in great details is to neutralize any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view.

1. It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

2. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

4. A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

5. No litigant can derive benefit from the mere pendency of a case in a court of law.

6. A party cannot be allowed to take any benefit of his own wrongs.

7. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

8. The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts.”

In the present case, the petitioner-defendant no.1 after appearing before the trial Court on 15.1.2009, nor appeared neither filed written statement. No evidence was led that he was so mentally disturbed that he could not appear before the trial Court for filing written statement. The ex parte judgment was pronounced on 3.6.2011 and thereafter an application for setting aside the ex parte judgment was filed on 4.5.2012. The trial Court after framing the issues and recording the evidence dismissed the said application on 22.4.2015 on the ground that except a bald statement that he was mentally disturbed since 2005 there was no reason to record that he had sufficient cause not to appear before the trial Court after service of the summons on 15.1.2009. The present revision petitioner before this Court has been filed on 10.8.2015 without explaining the reason for delay in filing this petition.

As per the ratio laid down by the Supreme Court in the judgment of ***Enviro-Legal Action vs. Union of India and others 2011 (8) SCC 161***, no ground is made out to set aside the orders dated 20.3.2009 (Annexure P-1), judgment and decree dated 3.6.2011 (Annexure P-2) and the order dated 22.4.2015 (Annexure P-5). Present revision petition is dismissed.

August 14, 2015
ritu

(RITU BAHRI)
JUDGE