

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4953 of 2005 (O&M)
Date of decision: 11.03.2015

M/s Kandhari Beverage Private Limited

... Petitioner

versus

Union of India and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. O.P. Goyal, Senior Advocate with
Mr. Randeep Singh, Advocate for the petitioner.

Mr. D.R. Sharma, Advocate,
for the respondents.

K.Kannan, J.

The defendant who suffered ex-parte decree on 23.01.2011 filed an application to set aside the decree beyond a period of 30 days, namely, on 23.01.2012. He contended that the lawyer who had been engaged did not file written statement and also did not inform him and, therefore, he did not know about the decree being passed. He also claimed that against the ex-parte decree itself, an appeal had been filed. The appeal also appears to have been dismissed.

Under law the person has either a right to have the decree set aside on the grounds which are sufficient in the manner set forth under Order IX Rule 13 or he may even preferred an appeal against the ex-parte judgment. The explanation under Order 9 Rule 13 provides the remedy of an appeal against the decree, cannot be exercised simultaneously with an application for setting aside the decree. The party must elect between the two. If the appeal has been dismissed, there is no scope for consideration of the application to set aside the ex-

parte decree.

Learned senior counsel appearing on behalf of the petitioner argues that it was the case of mistaken identity of the suit having been filed by the Union of India (in short 'Union') against the petitioner which has a similar name of the owner of the vehicle which caused the damages, namely, M/s Chandigarh Beverages Private Limited. The vehicle which caused the damage to Union's property had also been insured and the claim must have been only against the said company. The amount sought for recovery by the Union appears to also have been paid and the petitioner ought to be rightfully compensated for the loss incurred by making the payment by the owner of the vehicle which caused the accident, jointly with the insured of the vehicle. The cause of action must be taken as the order passed by this Court today, confirming the order already passed by the lower court when it has become final. The petitioner is at the liberty to adopt such a procedure for recovery either by means of independent suit or by adopting 3rd party procedure under Order VIII A of the Civil Procedure Code for recovery of the sum paid by it.

The civil revision petition is disposed of with above observations.

(K.KANNAN)
JUDGE

11.03.2015

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