

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5084 of 2014
Date of decision : November 5, 2015

Bharat Kumar

..... Petitioner

Versus

Beant Lal Sikri and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Puja Chopra, Advocate
for the petitioner.

Mr. Parvez Chugh, Advocate
for the respondents.

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 petitioner-defendant is in revision petition against the orders dated 24.1.2013 and 13.5.2014 whereby the application filed under Order 9 Rule 13 CPC has been dismissed and appeal filed against the same was also dismissed.

Ms. Puja Sharma, learned counsel appearing on behalf of the petitioner-defendant submits that the defendant left India on 22.6.2003 and the suit was filed in the year 2005 in respect of alleged promissory note executed on 8.1.2003. The passport entry would reveal this fact. The service on petitioner-defendant was effected through publication in newspaper for 7.12.2006 was thus

meaningless and on acquiring the knowledge in 2011, the attorney, the brother of the petitioner moved an application under Order 9 Rule 13 CPC, thus, prays that the revision petition be allowed.

Mr. Parvez Chugh, learned counsel appearing on behalf of the respondents submits that the petitioner-defendant has unequivocally admitted in the cross examination that he acquired knowledge of the ex-parte decree dated 5.3.2009 and ex-parte order dated 7.12.2006 in the year 2006 and the application under Order 9 Rule 13 was filed in the year 2011. There is no explanation of delay of 5 years. Therefore, both the courts below have rightly dismissed the application and appeal.

I have heard learned counsel for the parties and appraised the paper book.

Since the alleged amount of execution of pronote has been disputed by the petitioner-defendant and the fact that he has left India on 22.6.2003 and returned on 8.3.2012 which fact is evident from the entry in the passport.

In view of the aforementioned facts, I deem it appropriate that the petitioner-defendant can be permitted to contest the ex-parte judgment and decree by putting a condition that the petitioner-defendant shall deposit the entire principal amount of decretal amount by way of bank guarantee within a period of one month from the date of receipt of certified copy of the order. Subject to deposit of the amount the orders dated 24.1.2013 and 13.5.2014 are set aside, the petitioner-defendant shall be granted one opportunity to file amended written statement.

It is made clear that furnishing of the Bank guarantee shall be a condition precedent before the petitioner-defendant files the written statement.

It is expected that the trial court shall dispose of the application as expeditiously as possible preferably within a period of 8 weeks from the date of receipt of certified copy of this order.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 5, 2015
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