

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5308 of 2014

Date of decision: February 10, 2015.

Anand & Ors.

... **Petitioner**

v.

Ajit Dahiya

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri B.K. Bagri, Advocate, for the petitioners.

Dr. Bharat Bhushan Parsoon, J. (Oral):

On their non appearance, ex-parte decree dated 17.3.2005 was passed against the defendants-appellants, petitioners herein. An application was moved under Order IX Rule 13 read with Section 151 CPC by the appellant-defendants, petitioners herein, as also by respondent No.2 (proforma respondent) wherein they had sought setting aside of the said ex-parte decree as also orders dated 27.3.2003 and 4.4.2003 whereby they had been proceeded ex-parte earlier to passing of the ex-parte decree against them.

Vide order dated 8.1.2014, this petition under order IX Rule 13 read with Section 151 CPC of the defendants was dismissed. The defendants had unsuccessfully challenged this order before the first appellate court. Judgment of the Additional District Judge, Gurgaon in appeal is of 8.5.2014. By way of the present revision petition, concurrent findings against the petitioners in both the judgments are under challenge.

It is claimed by the petitioners that the lower court had given short adjournments under the influence of the plaintiff, now respondent No.1, and report of the process server regarding service and refusal of the

defendants as also of 27.3.2003 against defendant No.1 and of service by munadi and affixation against defendants No.2 to 4 for 4.4.2003 was procured one. It is claimed that along with the main suit, application under Order XXXIX Rule 2-A CPC was also pending adjudication where defendants were required to appear but were shown as having been served therein as well, and on their non-appearance, they were proceeded against ex-parte. It is claimed that entire exercise by the lower court as also by the appellate court reveals that the contrivance of the plaintiff, contesting respondent herein, with the process server has been completely overlooked by both the courts.

Perusal of the paper book during the course of arguments addressed by Counsel for the petitioners reveals that this petition challenging the concurrent findings of the trial court as well as of the first appellate court vide order dated 8.1.2014 and 8.5.2014 respectively is nothing but an abuse of process of the court.

Report of the process server regarding service of respondent No.1, on the basis of which ex-parte proceedings were taken against him for his non appearance on 27.3.2003 and service by munadi and affixation regarding defendants No.2 to 4 for 4.4.2003, is clear and categorical. The court had given definite finding regarding service of defendant No.1 Lakhi Ram and that on his non appearance, he was proceeded against ex-parte on 27.3.2003. The court had also observed that defendants No.2 to 4 were evading service and the court had further observed that their presence was then sought to be procured by substituted mode i.e., by way of munadi and affixation for which proceedings were adjourned to 4.4.2003 and those defendants having been served by substituted mode of service, on their non appearance, were proceeded against ex-parte on 4.4.2003. Thereafter, the ex-parte proceedings against defendants continued when the plaintiff, now decree holder had been leading his evidence. During the course of leading

of evidence by the plaintiff, the court had also made appointment of a local commission to inspect the spot. Conduct of the defendants is clear even from proceedings of the local commission because there as well, the defendants had been playing the game of hide and seek and had been keeping away from the court proceedings despite the fact that they were in active knowledge of the civil suit pending against them.

It is worth notice that the local commission had given notice to the defendants. The defendants had been evading service though defendant No.1 Lakhi Ram was served in person. He has nowhere claimed that his signatures either on the summons for his appearance on 27.3.2003 or on memo of appearance prepared by the local commission for his appearance for local inspection of the site in dispute were forged or fraudulent.

Rather, it transpires that the defendants having been proceeded ex-parte, continued construction at the spot despite injunction orders from the court, which action of the defendants in particular had even necessitated appointment of local commission but there also they had dodged the local commission despite their service for appearance as they did not appear. Raising of construction by the defendants despite orders of the court against them when they had not been appearing and had then been proceeded against ex-parte, had resulted in filing of the execution application against them.

So far as order dated 8.5.2014 of the appellate court against dismissal of application under Order IX Rule 13 CPC of the defendants, now petitioners, and respondent No.2 herein is concerned, the appellate court has not only endorsed the findings of the lower court but has also gone to the extent of observing that the process server had made reports against respondent No.1 as also against respondent No.2 to 4 in the usual course of his business and in the normal discharge of duties and thus veracity of such

reports could not be questioned.

The appellate court went even further to observe that all the defendants are close blood relations and defendant No.1 having been personally served whereas defendants No.2 to 4 were served through munadi and affixation, it is not plausible that they were not having knowledge of pendency of the suit and order of restraint against them. Affirming the findings of the lower court on this aspect, observations of the first appellate court are as follows:-

“... Thus, it is rightly concluded by learned trial court that on dated 21.3.2003, Lakhi Ram and Ranbir had got information about the suit and even Santosh had got information of the same. The information of suit with Anand & Santosh (though she knew earlier) may be considered w.e.f. 27.3.2003. It is not out of place to mention here that all defendants have common address and related to each other being father, sons, son's widow. There is nothing which could show that either of them had no cordial relations. Thus, knowledge with one is to be considered knowledge of the other also. In these circumstances, the claim of defendants about having got knowledge about ex parte judgment during execution in the year 2011, is a patent lie, thus, not acceptable.”

There is further finding of fact recorded by the first appellate court that the defendants have not been able to show any sufficient cause which prevented them from joining the proceedings in appeal. Following observations in para 12 of the impugned order of the first appellate court are very apt and seals the fate of the defendants:-

“Despite above lacunas in defendant's claim, it is not out of place to mention here that the defendants have also not been able to show any sufficient cause which prevented them from joining the proceedings in time, nor they have pleaded to this effect in their application moved under Order IX Rule 13 CPC. Even date, time, month of the knowledge is also not mentioned. Thus, neither the application moved under Order IX Rule 13 was maintainable being hopelessly time barred, nor there is any plea that due to sufficient cause, defendants were prevented from filing an appeal against ex parte judgment within stipulated time.”

Keeping in view the totality of facts and circumstances as also

the detailed discussion made in the interface of factual matrix and the attending circumstances by both the courts below concurrently against defendants, petitioners and proforma respondent no.2 herein, there is no merit in the revision petition. It is hereby dismissed in limine.

February 10, 2015.
kadyan

[Dr. Bharat Bhushan Parsoon]
Judge

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*