

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.658 of 2010 (O&M)

Date of decision: 16.07.2015

Gulab and others

.... Petitioners

versus

Smt. Santosh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amit Jain, Advocate,
for the petitioners.

Mr. Tara Chand Dhandwal, Advocate,
for respondents 1, 4, 6 and 7.

Mr. R.K. Hooda, Advocate,
for respondent No.9.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. Revision is against the dismissal of an application to set aside the ex parte decree that was passed on 21.12.1998. The application was filed on 17.07.1999 on a plea that he came to know that the decree had been passed ex parte only the previous day and the ex parte decree was preceded with an order passed by the court preponing the case to 03.04.1998 to 03.09.1998 and since he had no

notice on such an application for preponement, he did not know of the order passed by the court. According to him, there was yet another suit between the same parties and the counsel had actually noted down the present case as having been posted on 03.09.1998 and under normal circumstances, he would have felt the need to attend the court only on 03.08.1998 but since it was preponed without notice, he could not appear in court. He had produced the diary of the advocate to vouch for the genuine mistake that had occurred and provided the justification for setting aside the ex parte decree.

2. The counsel for the respondents would point out that when the case adjourned to 03.08.1998, he had already been set aside for the counsel who had originally appeared did not file his vakalatnama and there was no necessity in law for serving notice of application to the ex parte defendant. The preponement therefore cannot be faulted. The counsel for the respondents would also state that the counsel for the defendant did not file any affidavit setting forth the alleged mistake which is cited by the petitioner as justification for his absence.

3. I have noted down from the counsel that it is a suit to set aside an arbitral award passed as null and void. The award declares the immovable property to belong to the defendant and that is sought to be annulled through the present suit and the decree that was

ultimately passed. The petitioner has surely been negligent, for, as pointed out by the counsel for the respondents, the petitioner had been served with notice but he had not taken effective steps to bring his defence and he had allowed himself to be set ex parte and if the defendant-petitioner was thinking the case was adjourned to 03.09.1998, at least he must have known on 03.09.1998 itself that he had been set ex parte. There is simply no justification for a party to wait for another 10 months to apply to the court for setting aside an ex parte decree only on 17.07.1999. However, one aspect which I must observe is that there could be some truth about the fact that there was some confusion about dates, for, between the same parties, admittedly, there was yet another litigation through the same counsel and the other case was reported to have been posted on 03.09.1998. Since the dispute relates to immovable property, adjudication regarding title what was originally filed treating an arbitral award cannot be allowed to be scuttled through a decree which was uncontested. For the indiscretion in allowing the decree to be passed after remaining ex parte and for cost and time involved for more than a decade, I will impose ₹25,000/- as costs against the petitioner-defendant to pay to the plaintiff within 6 weeks from the date of receipt of copy of this order. If the amount is not paid, the opportunity granted to have the decree set aside shall stand withdrawn. If the proof of payment is made, the trial court shall set

a date and endeavour to dispose it off as expeditiously as possible taking particular note of the fact that the institution of the suit is more than 17 years from now.

4. The orders of the court below are set aside and the civil revision is ordered on the above terms.

(K.KANNAN)
JUDGE

16.07.2015
sanjeev