

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

CR No.5958 of 2015 (O&M).

Date of Decision: 30.09.2015.

M/s R.B. Steels (Now R.B. Forging Pvt. Ltd.

....Petitioner.

VERSUS

Bhakra Beas Management Board and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. A.P.S. Gill, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-18902-CII-2015

Allowed as prayed.

CR No.5958 of 2015

This revision petition is directed against the judgment dated 20.07.2015 passed by learned Additional District Judge, SAS Nagar, Mohali, affirming the order dated 25.02.2012 passed by Civil Judge (Senior Division), SAS Nagar, Mohali by virtue of which application under Order IX Rule 13 of the Code of Civil Procedure (for short, "the Code") for setting aside the exparte judgment and decree dated 14.02.2004 of the petitioner was dismissed.

The facts which need to be noticed are that an exparte judgment and decree dated 14.02.2004 for mandatory injunction was passed against the petitioner firm in Civil Suit No.246 dated 21.07.1997 filed by respondent No.1-plaintiff Bhakra Beas Management Board (hereinafter referred to as "B.B.M.B."). On 19.05.2005, the petitioner firm through its Managing Director Sanjeev Kumar (defendant No.1 in the suit) filed an application under Order IX rule 13 of the Code for setting aside the said exparte judgment and decree dated 14.02.2004. He submitted that he had come to know from reliable sources that B.B.M.B. was going to get the machinery removed from the plot of the petitioner firm and was also going to get the plot, as per the exparte decree, vacated from the petitioner firm and respondent No.2 Punjab Small Scale Industries and Export Corporation Limited. On further enquiry, he learnt about the exparte judgment and decree dated 14.02.2004.

The exparte judgment and decree was sought to be set aside on the ground that no personal service of the summons issued in the civil suit was ever effected upon the petitioner. Some wrong report was procured on the summons by the B.B.M.B. to get the petitioner firm proceeded exparte for wrongful gains. The value of the plot sought to be vacated by uprooting the machinery was more than Rs.1 Crore and their such act would cause loss to the tune of Rs.20 lacs.

Respondent No.1-B.B.M.B. contested the application raising preliminary objections with regard to the application being barred by time and there being intentional concealment of true and material facts by the

petitioner etc. On merits, it was submitted that the summons issued in the civil suit were duly served on the petitioner but it did not bother to appear to contest the same. Number of letters dated 19.03.2004, 11.05.2004, 14.05.2004 and 09.07.2004 were also written to the petitioner firm which were received by it. Letter no.PSIEC/ESTATE/A-2/6807 dated 06.07.2004 of PSIEC was also received by the petitioner firm as was confirmed vide letter no.RBF/2004-05/ADM/02 dated 13.07.2004 of the petitioner firm. B.B.M.B. added that it was not going to get the whole plot vacated and only the obstruction/structure near the main line of the plot was to be removed to avoid any mishap and interruption in supply of electricity.

On the basis of the pleadings of the parties, following issues were settled:-

- (1) Whether there are sufficient grounds to set aside exparte judgment and decree dated 14.02.2004? OPA.
- (2) Whether the application is time barred? OPR.
- (3) Relief.

Both the parties adduced evidence in support of their rival contentions. Considering the evidence of the parties and the submissions made on their behalf, learned trial Court came to the conclusion that there were no sufficient grounds to set aside the exparte judgment and decree dated 14.02.2004. Accordingly, the application of the petitioner was dismissed with costs of Rs.5,000/- to be deposited with D.L.S.A., Mohali. Being aggrieved by the order dated 25.02.2012 passed by the Civil Judge (Senior Division), SAS Nagar, Mohali, the petitioner preferred an appeal

which was dismissed by Additional District Judge, Mohali vide judgment dated 20.07.2015.

Feeling unsatisfied, the present revision petition has been filed.

The submissions made by Mr. A.P.S. Gill, learned counsel representing the petitioner have been considered.

At the very outset, learned counsel for the petitioner argued that Sanjeev Kumar is the Managing Director of the petitioner firm and in the application filed by the petitioner for setting aside the exparte judgment and decree, it was specifically pleaded that the summons issued in the civil suit were never duly served upon the petitioner firm. It was wrongly alleged that the summons were received by the Managing Director Sanjeev Garg whereas he denied his signatures on the summons. Neither the process server was examined nor the admitted signatures of said Sanjeev Garg were got compared with the disputed signatures on the summons. As such, it could not be proved by the B.B.M.B. that service of notice was duly effected on the petitioner firm. Learned counsel contended that there was no reason for the petitioner firm to not appear and contest the suit had it been served with the notice.

There appears no force in the argument of learned counsel for the petitioner. The main ground on which the petitioner has prayed for setting aside the exparte judgment and decree is that the summons in the suit were not duly served on it. Scrutinizing the records and the facts, the findings of learned first appellate Court are as under:-

“Appellant vide his application under Order 9 Rule 13

CPC had sought setting aside of ex parte judgment and decree dated 14.2.2004. Order 9 Rule 13 CPC empowers the Court to set aside ex parte decree if the applicant satisfies the Court that summons were not duly served or even if served, he was prevented by any sufficient cause from appearing but if there is irregularity in service of summons but defendants had notice of date of hearing then no order of setting aside of ex parte decree shall be passed. In the instant case, the summons were served upon appellant (defendant No.1 in the original suit) as is evident in order dated 27.8.1997 Ex.P3 but due to non appearance was ordered to be proceeded against ex parte. Summons is said to be served through M.D of the appellant concern, Sanjeev Kumar who did not appear into the witness box rather authorized one clerk Rajesh Kumar who appeared as AW1 and did not identify the signature of Sanjeev Kumar thereon. Sanjeev Kumar was the best person to appear and depose that he never received summons especially when an observation of due service was recorded by learned trial Judge. But he abstained for the reason best known to him. Therefore, as per Article 123 Limitation Act, 1963, the period of limitation for setting aside ex parte decree is 30 days from date of decree or where the summons or notice was not duly served when the applicant had knowledge of the decree. In this case summons were duly served upon appellant through its

M.D Sanjeev Kumar, thus institution of suit against them and the next date of hearing was within their knowledge. But they did not appear to contest the suit instituted against them. Judgment and decree in this case was passed on 14.2.2004. Therefore as per Article 123 Limitation Act, appellant had to file application under Order 9 Rule 13 CPC within 30 days from date of decree as due service of summons was accepted by learned trial Judge. But the application was filed on 19.5.2005 i.e with a delay of more than 1 year. No sufficient cause has been put forth by appellant which prevented him from filing the application within period of limitation. Otherwise also a letter dated 6.7.2004 Ex.R7 was issued by respondent No.1 regarding implementation of order in civil suit No.246 of the suit filed by respondent No.1 against appellant which is duly acknowledged & relied upon by appellant vide letter dated 13.7.2004 Ex.R2, meaning thereby that even if it is presumed that respondent did not receive summons as asserted, he came to know regarding orders of learned trial Court in July 2004 whereas he filed application under Order 9 Rule 13 CPC in May 2005 i.e way beyond expiration of period of limitation. Law is tool to help those who are vigilant and not for those who sleep over their rights.

From the above findings, it is apparent that the Managing

Director of the petitioner firm namely Sanjeev Garg, through whom the

instant application had been filed, had received the summons issued in the civil suit. The summons bear his signatures. In his pleadings, he denied having received the summons but surprisingly he did not opt to appear in the witness box to reiterate his submission on oath and deny the signatures on the summons. His intentional absence from the witness box is sufficient for raising an adverse inference against him. Moreover, as noticed above, letter dated 06.07.2004 Ex.R7 issued by P.S.I.E.C. regarding implementation of order passed in civil suit was duly acknowledged by the petitioner firm vide letter dated 13.07.2004 Ex.R2. That shows that the petitioner had knowledge about the impugned judgment and decree passed against it in civil suit no.246 of 1997 in July, 2004 whereas the application under Order IX Rule 13 of the Code was filed in May, 2005 i.e. much after the expiry of the limitation period even from the date of knowledge of the judgment and decree.

Thus, finding no illegality or perversity in the judgment dated 20.07.2015 passed by the learned appellate Court and order dated 25.02.2012 passed by learned trial Court warranting intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

30.09.2015.

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