

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

C.R. No.6300 of 2015 (O&M)

Date of Decision.29.09.2015

Raj Kumar

.....Petitioner

Versus

Gurcharan Singh (deceased) through LRs

.....Respondents

Present: Mrs. Gurnam Kaur Turka, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 216 days in refiling the revision petition is condoned.

2. The revision petition is against the order passed dismissing the application filed by the defendant to set aside the ex parte decree on 19.01.1999. The application for setting aside the ex parte decree had been filed on 19.08.1999 contending that he came to know about the decree only when he was served with summons in execution and that he should be given an opportunity to contest the case on merits.

3. While considering whether there had any valid justification for his absence, the Court took notice of the fact that an application for injunction had been filed along with the suit and the petitioner-defendant had been served with the application along with the copy of the plaint. The Court found that there was an endorsement of return in the suit summons that he had refused to receive the summon and hence,

munadi was effected. Addressing the issue of whether there was valid service in view of the objection taken by the petitioner that the full address had not been given, the Court observed that the defendant-petitioner himself had filed his own suit assailing the agreement as invalid and in the suit he had given the very same address of what was stated in the present suit instituted by the respondent-plaintiff. The court also took note of the fact that the petitioner must have known about the institution of suit by the specific reference to the written statement about the institution of suit for specific performance.

4. The Court below, therefore, considered two important aspects. Service of summons in application for injunction with copy of the plaint and the written statement filed by the plaintiff in the defendant's suit referring to the suit for specific performance. The Court observed that the petitioner had deliberately absented himself and that he cannot have the benefit to make the decree set aside.

5. Learned counsel appearing on petitioner argues that the summons in interlocutory application cannot be taken as summons in suit and the endorsement of refusal had not been established by examining any court bailiff for alleged refusal to accept the summons. I cannot take this objection to be very serious, for, the Court did not proceed only on this ground. The Court was referring also to an issue of how the petitioner must have known about the institution of suit by virtue of written statement filed by the plaintiff in the suit filed by the defendant assailing the agreement. The argument by the counsel is that in the written statement filed by the present plaintiff, there was no mention about the case number or the Court before which the case was

instituted. If there was plea relating to the institution of the suit in written statement and if the petitioner also had the benefit of service of plaint copy along with the interlocutory application, any reasonable person would have responded immediately to make enquiries and apprise himself about the institution of the suit. The conduct of the petitioner betrays gross negligence and I have no doubt in my mind that the petitioner was not coming to the Court with truth about the knowledge of the case. Under normal circumstances, I would have allowed for a consideration of the case on merits but in this case, there has been enormous delays occurring at various times. The suit had been instituted in the year 1996 and the petitioner's own suit for assailing the agreement has come to be dismissed under Order 17 Rule 3 CPC. The petitioner has never shown any alacrity in the conduct of the case and if his own suit assailing the agreement has failed, there would really be nothing for consideration in suit, for, the disposal under Order 17 Rule 3 CPC will itself have an important bearing for consideration of whether the agreement could be enforced or not.

6. I will find no merit in allowing for the ex parte decree to be set aside and dismiss the revision petition.

(K.KANNAN)
JUDGE

September 29, 2015
Pankaj*