

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

CR No. 6570 of 2012 (O&M)
Date of decision: March 19, 2015

Mastan Singh

...Petitioner

Versus

Tarlochanpreet Singh

...Respondent

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?**

Present: Mr. Vikas Singh, Advocate,
for the petitioner.

Mr. Naresh Jain, Advocate,
for the respondents.

Mr. Sanjeev Sharma, Advocate,
for the applicant in (CM No. 17358 CII of 2014)

K. KANNAN, J. (Oral)

1. The revision petition is against the order dismissing an application for setting aside an ex-parte decree that was passed on 21.1.2009. The appeal preferred against that order was also dismissed.

2. The suit was for specific performance of the sale instituted in the year 2006. As per the terms of the agreement, earnest amount of Rs. 15 lacs was said to have been paid through cheque and when, according to the plaintiff, the balance was not received and the defendant was not willing to abide by the terms, the suit had to be instituted. The defendant had engaged a counsel and filed a statement but he did not come at the trial when the counsel appearing for him had informed the court that he had no instruction

from the party and the court set him ex-parte on 23.5.2008. The decree was,

however, not passed immediately and the case was adjourned from time to time and the ex-parte decree was passed on 21.1.2009. The plaintiff/deeree-holder had deposited the balance of sale consideration, secured the sale deed and applied for delivery of the property. Only at the execution stage, the defendant took notice of the proceedings and applied to the court on 24.10.2009 to set aside the ex-parte decree.

3. The petitioner's contention was that when the counsel had pleaded no instruction, the preponderance of law as held in Malkiat Singh Vs. Joginder Singh 1998 (1) R.C.R.(Civil) 277 was that the party should not suffer for the fault of the counsel, who pleads no instructions. In this case, the court had not issued notice to the party after the counsel had reported no instruction and the ex-parte decree was, therefore, not justified.

4. The counsel appearing on behalf of the respondent points out that the defendant had been served in suit and represented through counsel. When the respondent did not show up in court and the court, therefore, set him ex-parte on 23.5.2008, the trial court did not proceed to grant a decree immediately but had kept the case pending for nearly 8 months before the decree was passed on 21.1.2009. If the defendant had been served through court, then an application to set aside ex-parte decree must be filed within 30 days from the date of the decree and the knowledge of the decree is irrelevant when he had been served through the court and he was represented through a counsel. There was not even an application filed to condone the delay in filing the application for setting aside ex-parte decree.

5. We have already seen that the ex-parte decree was passed on 21.1.2009 and the application was filed only on 24.10.2009 when the notice of the suit has already been received. The time for filing an application to

set aside an ex-parte decree shall be 30 days from the date of the decree.

Article 123 of the Limitation Act reads as under:-

	<i>Description of application</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
123	To set aside a decree passed <i>ex parte</i> or to re-hear an appeal decreed or heard <i>ex parte</i> <i>Explanation.</i>—For the purpose of this article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908 shall not be deemed to be due service.	Thirty days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree

6. It will be evident that if summons have not been served or the notice was not duly served, the date of knowledge of decree would be relevant. It was, therefore, expected that when the petition was filed, the petitioner had accompanied his application to set aside ex-parte through an application for condonation of delay by moving a separate application under Section 5 of the Limitation Act. That application could have been brought forth only with a petition setting out justifiable causes for not making the application in time.

7. I did not want to be too technical and was prepared to see the justification under Section 5 of the Limitation Act through even the application filed under Order 9 Rule 13 of the Code of Civil Procedure, if only there existed a conduct that showed that he was reasonably diligent. The execution of the agreement itself was not denied. Although the defendant denied the receipt of earnest money, it was evident that earnest money has been paid through a cheque and it is not the case of the defendant that cheque had bounced. All that he was pleading for was, that the plaintiff was not ready and willing. If the defendant had engaged a counsel and had filed a written statement, it ought to be expected that he was ready to participate at the trial at all times. He cannot be under a

blissful ignorance about what was happening in the court. While I take the law as established that the court under normal circumstances would have issued a notice if the counsel was reporting no instruction, I would take that to be a measure of sound practice that the court will not rush through proceedings and conclude a case as decreed or dismissed only for the purpose of statistics. The court did not proceed to decree the suit ex-parte on the same day when he was set ex-parte on 23.5.2008. On the other hand, the decree had been passed only 9 months later. This is further proof for the fact that he had just thrown his own caution to winds and was looking for a privilege which simply did not exist for the court to descend on him to require his presence. The conduct of the petitioner is not taking any action for nearly 9 months after the decree was passed and more than one year and five months after he was set ex-parte betrays his total lack of care about the case pending before the court.

8. It is difficult to take a general view that the parties will always be given a large latitude of indulgence only because the matter to be adjudicated relates to a claim to immovable property. As much care as the court would be expected to bestow that a party does not lose out an opportunity to contest the case on merits, so must be the care of the litigant that he does not take a case before court for granted; that it will always be delayed and that if he is himself the cause for the delay, no adverse result will ensue. Even at the time when the notice was issued when the Civil Revision was brought before this court, there was an attempt to test his bonafide and he was directed to deposit Rs. 20 lacs, having regard to the fact that he had already received Rs. 15 lacs as earnest money in the year 2006. The petitioner again allowed grass to grow under his feet. He faulted

and secured a further lease of life through a discretionary intervention from the Supreme Court when the matter had come up again for consideration. I wanted to know if the parties would negotiate again and put before the counsel whether they were willing to settle the matter outside court. The counsel appearing for the respondents would want the curtain down and press for a decision on merits.

9. Pushed to wall, there is nothing for the petitioner to argue on merit. The petitioner is contending for by his own abject negligence and he pays the price for it now. I will find no reason for setting aside ex-parte decree and dismiss the revision petition, holding that there is no error in the orders passed by the courts below.

March 19, 2015
prem

(K.KANNAN)
JUDGE