

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

203

**CR-7104-2011
Date of Decision-06.10.2015**

HUDA & ORS.

Petitioners

Versus

SUBHASH CHAND AND ORS

Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Somnath Saini, Advocate
for the petitioner.

Mr. Manu Loona, Advocate
for respondents No.1 to 4.

Mr. Rajesh Sethi, Advocate and
Mr. Arun Biriwal, Advocate and
Mr. Sachin Gupta, Advocate
for respondents No.5 to 7.

RAJ MOHAN SINGH, J. (ORAL)

[1]. The present revision petition has been filed by defendants against the order dated 01.05.2010, whereby application under Order 9 Rule 13 CPC filed by the defendants was rejected on the ground of limitation. Defendants were unsuccessful in appeal against the said order before the Lower Appellate Court. Lower Appellate Court held that appeal is not maintainable. However, liberty was granted to the defendants to file revision petition before appropriate Forum. This is how the present revision petition came to be filed in this Court.

[2]. In a suit for mandatory injunction, ex parte judgment and decree was passed against the defendants on 04.08.2006 after they were proceeded against ex parte on 03.08.2006.

Defendants were served in the suit and they appeared and filed the written statement. Even they have participated in cross examination of plaintiffs' witnesses. At that stage, they were proceeded against ex parte. On 29.01.2007/30.01.2007, there was a Lok Adalat of HUDA itself, wherein matter was discussed. HUDA Authorities duly participated to deliberate the issue of allotment of plot under oustees quota to the plaintiffs and ultimately, they rejected the claim of the plaintiffs on 30.01.2007. Even the factum of ex parte decree dated 04.08.2006 was very much in the knowledge of HUDA Authorities on 30.01.2007 i.e. when GPA of the Authorities duly brought the factum of ex parte decree to the knowledge of Authorities. Thereafter, execution of ex parte decree was filed, wherein learned counsel for the HUDA appeared on 08.08.2008. From that stage also it cannot be presumed that HUDA was not in the knowledge of ex parte decree passed by the Civil Court on 04.8.2006. Ultimately, application for setting aside the ex parte decree was moved on 29.04.2009. The same has been dismissed by the trial Court on the ground of limitation and the Lower Appellate Court has rejected the appeal being not maintainable.

[3]. I have considered the arguments raised by the learned counsel for the petitioners.

[4]. Learned counsel for the petitioners states that on merits plaintiffs are not entitled to plot under oustees quota as per instructions of the Department. Merit of the case is not to be gone into, unless and until ex parte decree against the

defendants is set aside. The Department having appeared in pursuance to notice of the main suit and even after filing of the written statement, they have participated in the process of cross examining the plaintiffs' witnesses. Thereafter, they were proceeded against ex parte on 03.08.2016. From 03.08.2006 till 29.04.2009 no sufficient cause has been shown for not moving the application for setting aside the ex parte decree dated 04.08.2006. The defendants have slept over the issue for such a long time. This inordinate delay is not to be condoned just on the asking of the defendants on the ground that Advocate did not inform them about the ex parte order. Even this plea of the defendants is not sustainable inasmuch as that after appearance in the main suit no plea of information being not supplied by the Lawyer can be presumed. Even if it is presumed that no information was given by the Lawyer after 04.08.2006, even then the Authorities cannot escape from their obligation to file the application particularly after acquiring knowledge in the proceedings of Lok Adalat which was held on 29.01.2007/30.01.2007. Even at that stage, respondent-Authorities did not move any such application. Even after appearance of learned counsel for the HUDA on 08.08.2008 in execution proceedings, no such application was moved. It is only on 29.04.2009 i.e. after about 9 months of appearance in the Executing Court, the application in question was filed before the trial Court.

[5]. In considered opinion of this Court, inordinate delay and

conduct of the defendants do not attract any sympathetic consideration by this Court. Accordingly this revision is dismissed.

October 06, 2015
prince

(RAJ MOHAN SINGH)
JUDGE