

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

Civil Revision No.7282 of 2013 (O&M)

Date of decision: **02.12.2015**

Vinod Kumar

.... Petitioner

versus

Devinder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Manpreet Singh, Advocate,
for Mr. Atul Goyal, Advocate,
for the petitioner.

Mr. Naveen Bawa, Advocate,
for the respondent.

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.

1. The revision petitioner is the defendant in suit whose application filed for setting aside an ex parte decree that was passed on 17.10.2003 was dismissed. The appeal filed by him was also dismissed. The revision petitioner, therefore, canvasses the correctness of the decisions rendered by the two courts below.

2. The dismissal had been on account of the fact that both the courts believed that after the ex parte decree was passed on 17.10.2003, an application had been filed by the defendant to set

aside the ex parte decree on 19.12.2003. The petition was pending as late as on 17.02.2006 when it was dismissed for default. The petitioner had actually suppressed the fact of an earlier application and had filed a fresh application on 10.02.2006, that is, a few days before the dismissal of the earlier application.

3. I have the copies of the lower court records sent to this court but I am unable to find from the records submitted whether there had been any application filed to the knowledge of the petitioner. Evidently there was an order of dismissal passed by the court on 17.02.2006 which was purported to be an application filed earlier by the petitioner for setting aside the ex parte decree. If there had been any contention that he had never filed any such application, the petitioner ought to have been given an opportunity to let in evidence of whether the signatures found in the petition alleged to have been filed for setting aside the ex parte decree that was said to have been filed 2 days after the ex parte decree was passed was the petitioner's own document or it had been fraudulently brought in as contended by the petitioner. The order already passed is set aside and the matter is remitted to the court below for examination of the petitioner afresh in the light of the contention made by him that he had not actually filed the petition on 19.10.2003 for setting aside the ex parte decree. The court will examine the original records, confront the documents to the

petitioner and elicit whether it has been actually filed at his instance through his counsel who was on record at that time. The court will take a fresh decision in the light of evidence after giving opportunity to both parties to let in evidence. The burden of proof is undoubtedly only on the petitioner to prove that he had not filed the petition on 19.10.2003.

4. The impugned order is set aside and remitted to the trial court for consideration of the application afresh in the light of the observations made above.

5. The revision petition is disposed of on the above terms.

(K.KANNAN)
JUDGE

02.12.2015
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