

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

RSA No.5189 of 2014 (O&M)

Date of Decision.04.12.2015

SI Jugraj Singh

.....Appellant

Vs.

Sarabjit Kaur and others

.....Respondents

Present: Mr. Nakul Sharma, Advocate
for the appellant.

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. The defendant who suffered a decree for maintenance and charge on the properties is on appeal before this Court. The maintenance was sought by the plaintiffs @ ₹5000/- each aggregating to ₹25,000/- on the ground that the defendant was not taking care of them. The plaintiffs' status as the wife and children was itself not denied in the written statement but after filing of the written statement, the defendant did not appear at the trial and the allowed the suit to be decreed on 15.05.2006. He filed an application to set aside the decree on 10.02.2007 i.e. nearly about 7 months later which was allowed on payment of costs of ₹2,000/-. The defendant against absented on 16.02.2008 when it was posted for trial and he was set ex parte. He again filed an application on 08.06.2012 to set aside the ex parte order that was allowed on payment of costs of ₹2,000/-. The defendant yet again absented from the Court on 13.02.2013 and ex

parte decree was passed. He filed another application on 14.08.2013 and that application was dismissed on 24.10.2013 observing that he was habitually absent from Court and application had been filed only to delay the proceedings. The said order had not been challenged but after the decree was passed, the defendant preferred an appeal and at the Appellate Court, he was contending that he did not have sufficient opportunity given to defend the case and the decree passed was erroneous. If the defendant had not availed to himself several opportunities which he had to contest the case and he had allowed an ex parte decree to be passed, the ground of challenge could only be restricted to the situation that the Court that passed the decree did not have the competency to pass the same or it was passing an order which was on its face erroneous. The argument that the defendant did not have sufficient opportunity to contest the case was simply not available as a ground to assail the decree, when it was his own choice not to contest the case and allowed the case to be decreed ex parte. He was a government servant working in police department and he ought to have known the consequences of his recalcitrants and perpetual absence. The decree granted against him was justified and there is no warrant for making any intervention by this Court in the second appeal.

2. The second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

December 04, 2015
Pankaj*