

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

CR No.1098 of 2016 (O&M)

Date of decision: 12.02.2016

Harmail Singh

..... Petitioner

VERSUS

Gurmail Singh and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sunny K. Singla, Advocate,
for the petitioner.

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 ?

K.KANNAN, J. (ORAL)

1. The revision is against the order allowing the ex parte decree passed in a suit for specific performance to be set aside. Admittedly, summons in suit had not been served to the defendant. When the summons in execution was served, the defendant in Canada has appointed power of attorney to take steps to have that the decree set aside. The Court has satisfied itself that there was no service for summons in suit and has allowed for the ex parte decree to be set aside.

2. Learned counsel states that neither the power of attorney has been examined nor respondent No.1 stepped into the witness box and as such there is no evidence on record to prove the version of respondent No.1. It was a matter of record that summons in suit had not been served and therefore, the Court found it was eminently a fit case for ex parte decree to be set aside. The non-examination of the defendant or a power of attorney

would be immaterial in such a situation.

3. There is also a contention raised that the petition is barred by limitation. The case where summon has not been served, the limitation will begin to run only from the date of knowledge. In this case, the knowledge is claimed by the judgment debtor from the date when he was served that summon from the Executing Court and only after he was served with summons, the power of attorney presented petition for setting aside a decree on 21.08.2009.

4. I asked the counsel if he knows the date when the execution petition was served to the defendant, he says that he does not know. I do not find that there is any merit even in a plea that the application is barred by limitation. As observed already the judgment debtor was living abroad and was trying to take steps to have the ex parte decree set aside through an application which was filed on 21.08.2009. I cannot find any delay as prevailing to defeat the decree from being set aside.

5. There is also an argument that after he obtained an ex parte decree, he has also obtained a sale deed. There is always an inherent risk of decree being set aside if it is passed ex parte. The Court will take the plaintiff's contention on board to allow for taxing the expenses incurred for purposes of stamp and registration charges as measure of costs to be added in the memorandum of costs, in the event of the decree being granted after trial in favour of the plaintiff.

6. The revision petition is dismissed but with the above observations.

12.02.2016

Bhumika

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I attest to the accuracy and
integrity of this document

(K.KANNAN)
JUDGE