

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

-.-

CR 2107 of 2016
Date of decision: 05.04.2016

Manmohan Singh

..... Petitioner

Versus

Sukhwinder Kaur and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Tajinder Pal Singh Makkar, Advocate
for the petitioner

-.-

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J. (Oral)

The present petition directs challenge to order dated 03.09.2014 (Annexure P4) passed by the Civil Judge (Junior Division) Ludhiana and order dated 26.11.2015 (Annexure P6) passed by the Additional District Judge, Ludhiana whereby application of the petitioner for setting aside the ex-parte judgment and decree dated 24.09.2003 (Annexure P2) was dismissed by the learned trial Court and the appeal preferred against the order passed by the trial Court, has been dismissed.

Counsel for petitioner would contend that a serious prejudice would be caused to the petitioner in case the impugned judgment and decree dated 24.09.2003 is not set aside and the petitioner is not provided an opportunity to contest the proceedings initiated by Sukhwinder Kaur and

others. It is further argued that the respondents obtained an ex parte judgment and decree at the back of the petitioner, knowing fully well that the petitioner was not residing in India during pendency of proceedings culminated in the aforesaid judgment and decree. Another submission made by counsel is that technicalities and procedural delays should not be allowed to stand in the way of the petitioner to seek adjudication of rival claims of the parties on the basis of merit.

I have heard counsel for the petitioner and perused the records particularly the order dated 03.09.2014 passed by the trial Court non-suiting claim of the petitioner qua setting aside the judgment and decree dated 24.09.2003.

Learned trial Court framed the following issue for determination:-

- 1) Whether ex parte judgment and decree dated 24.09.2003 is liable to be set aside as prayed for? OPP
- 2) Whether application for setting aside the ex parte judgment and decree dated 24.09.2003 is time barred? OPR
- 3 Relief.

The Court recorded a finding that the application is hopelessly time barred; delay has not been explained and no prayer for condonation of delay has been made. The Court has further noticed that the petitioner appeared in the witness box and in his cross examination, he has categorically and specifically admitted that he acquired knowledge of the ex parte decree in the month of May 2004, but admittedly an application was filed on 13.09.2004, a long after expiry of period of limitation prescribed by law. Counsel for the petitioner has fairly informed the Court that no

application was filed by the petitioner under Section 5 of the Limitation Act, 1963 for condoning delay in filing the application under Order 9 Rule 13 of the Code of Civil Procedure. As the application filed by the petitioner has been rightly held to be barred by limitation, no useful purpose would be served by adverting to the issue, whether the petitioner was properly served or not in the proceedings. In this view of the matter, I do not find any error much less illegality in the impugned orders as would call for intervention.

Dismissed.

(Rekha Mittal)
Judge

05.04.2016
mohan bimbura