

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 2393 of 2015**

**Date of Decision: 10.02.2016**

Mahant Gangapuri Chela Kapil Muni

... Petitioner(s)

Versus

Panchayati Akhara Maha Nirwani Coshayan Nagasact Daragang Paryag  
and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | <b>Yes</b> |
| 2  | To be referred to reporters or not?                                   |            |
| 3  | Whether the judgment should be reported in the Digest?                | <b>Yes</b> |

Present: Mr. Jagdish Manchanda, Advocate  
for the petitioner(s).

Mr. Surender Dhull, Advocate  
for respondents No.1 to 3.

**Shekher Dhawan, J.**

Present petition is challenge to the order dated 16.3.2015, passed by learned Civil Judge (Junior Division), Pehowa, whereby application for setting aside the *ex parte* proceedings against the petitioner/defendant No.1 and also for setting aside the order dated 15.6.2011, passed by learned Additional Civil Judge (Senior Division), Pehowa, whereby petitioner was proceeded against *ex parte*.

Relevant facts of the case that civil suit was filed by

Panchayati Akhara Maha Nirwani Coshayan Nagasact Daraganga Paryag and others for declaration. The case was fixed for service of defendant No.1, who is petitioner before this Court, upon whom service could not be effected. Thereafter, the Court below passed the order for effecting service upon defendant No.1 through munadi and he was served for 15.6.2011. But there was no representation from petitioner side and as such he was proceeded against *ex parte*. Subsequently, present petitioner moved an application for setting aside *ex parte* proceedings on 2.3.2015 i.e. after more than three & half years by taking the plea that he was not aware of the pendency of the proceedings and the Court below, after considering reply, having been filed by the respondents, dismissed the application and present petition is challenge to the said order.

Learned counsel for the petitioner submitted that petitioner was not aware of the proceedings in the litigation before the Court below and when the petitioner came to know about passing of *ex parte* order dated 15.6.2011, application was filed and the same was dismissed without any justified reasons by the Court below. More so, there was no reason for the petitioner to remain away from the proceedings of the Court. Learned counsel for the petitioner submitted that in such like cases of proclamation and service by substituted mode of service, *ex parte* proceedings are liable to be set aside. On this point, reliance has been placed upon the judgment rendered by the Division Bench of this Court in ***Saroj v. Rajender Kumar 2013(3) RCR (Civil) 451*** and view taken by co-ordinate Benches of this Court

in case ***Lilu Ram v. Mangtu Ram and Others 2012(5) RCR (Civil)18.***

Learned counsel for the respondents submitted that petitioner was living in the temple itself and had been appearing in different cases through counsel as well. Even on the same day, petitioner appeared in some other matter before the Courts at Pehowa. Petitioner was intentionally avoiding the Court and the Court below has rightly dismissed the application for setting aside the *ex parte* proceedings and present petition be dismissed.

Having considered the submissions made by learned counsel for the parties and the facts of the case, which are distinguishable from the facts of the judgment rendered by the Division Bench of this Court in ***Saroj's case (supra)*** and another judgment rendered by co-ordinate Bench of this Court in ***Lilu Ram's (supra)***, the Court below has rightly taken the view that petitioner was intentionally avoiding the Court by appearing in different litigation before the Courts at Pehowa. As regard to service of petitioner at the address of temple, that is complete address because Arunaya temple is a prominent place and a person can certainly be identified and summons can be served with the name of Mahant Gangapuri Chela Kapul Muni. Service of summons could not be effected upon the petitioner and as such substituted service was ordered and despite that petitioner failed to put in appearance. There is no dispute that normally Courts are quite liberal in setting aside *ex parte* proceedings. But if a party to the litigation is making deliberate attempt to thwart the process of law and merely

choosing to remain away from the Court despite having knowledge of the litigation, then such a party should not be allowed to misuse the process of law, otherwise that will be the mockery of the judicial system. *Ex parte* proceedings against present petitioner were initiated on 15.6.2011. The Court below has recorded observation that another civil suit titled "Panchayati Akhara Maha Nirwani Coshayan Nagasact Daragang Paryag and Others v. Mahant Gangapuri Chela Kapil Muni and Others" was also fixed for the same day at Pehowa Court and Mahant Gangapuri had appeared through his counsel on the same day. Counsel representing the present petitioner could not dispute that fact at the time of arguments before the Court below. The said civil suit was adjourned for different date and present petitioner was duly represented by his counsel. More so, present petitioner Mahant Ganga Puri appeared for cross-examination on 13.11.2014. That way the plea taken by petitioner is not tenable that he was not aware of the present litigation or that he has gone abroad during the intervening period and as such he has no knowledge regarding pendency of litigation. The Court below rightly took the view that petitioner was having sufficient knowledge regarding pendency of the present litigation and there was no justified case for setting aside the *ex parte* proceedings. There is absolutely no illegality in the order under challenge and present petition is dismissed being devoid of any merit.

**(Shekher Dhawan)**  
**Judge**

**February 10, 2016**

"DK"