

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3092 of 2016

Date of Decision: 02.05.2016

Abdul Gani

... Petitioner(s)

Versus

Yogesh Kumar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Satish Chaudhary, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India, filed by defendant/petitioner, is challenge to the order dated 7.12.2015, passed by learned District Judge, Mewat and order dated 12.3.2015, passed by learned Additional Civil Judge (Senior Division), Ferozepur Jhirka, whereby application under Order 9 Rule 13 CPC for setting aside *ex parte* order dated 19.9.2008 and *ex parte* judgment & decree dated 8.9.2009, passed in Civil Suit No. 185 dated 3.3.2007, was dismissed.

Learned counsel for the petitioner submitted that the Court

below had completely ignored the fact that petitioner is an illiterate and rustic person and he engaged an Advocate to defend the case on his behalf. He was advised by his counsel that his presence was not required on each and every date and would let him know when he would be required to attend the Court. However, his counsel did not appear and petitioner was proceeded against *ex parte*. Petitioner was not having any knowledge about passing of above stated *ex parte* judgment & decree dated 8.9.2009 and it came to his knowledge initially on 9.12.2014 when the petitioner had appeared in execution petition. The Court below completely ignored the said facts while deciding the execution application and the impugned orders are liable to be set aside.

Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that the plea raised by the petitioner has already been considered by both the Courts below and returned concurrent findings of facts that petitioner had appeared before the Court below and pendency of the proceedings was very well within his knowledge and there was no reason for him to remain away from the Court. The Courts below have also dealt with the aspect that even if for the sake of arguments, it is presumed that petitioner attained knowledge of *ex parte* judgment & decree dated 9.9.2013 when he appeared in the execution proceedings, still the application under Order 9 Rule 13 CPC was not filed within the period of limitation and the Court of learned Additional Civil Judge (Senior Division), Ferozepur Jhirka rightly dismissed the application and the first

Appellate Court rightly dismissed the appeal against the said order.

In view of above, present petition is without any merit and the same stands dismissed, *in limine*.

(Shekher Dhawan)
Judge

May 2, 2016
"DK"