

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

CR No. 3486 of 2015 (O&M)

Date of decision: 24.05.2016

Amit Kumar

... Petitioner

versus

M/s Parbh Dyal Megh Raj

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vinod S. Bhardwaj, Advocate for the petitioner.

Mr. Amit Goyal, Advocate for the respondent.

K.Kannan, J. (ORAL)

The application to set aside the ex-parte decree in a summary suit has been dismissed. It is a suit for recovery of money claim on a promissory note and the suit has been filed after service of notice on the defendant. In petitions to set aside the ex-parte decree in summary suits, it has been held by the Hon'ble Supreme Court in Maresh Kumar Joshi Vs. Madan Singh Negi, 2015 (1) Scale 418 that it shall be not sufficient to merely give the sufficient cause but should include the special circumstances for setting aside the ex-parte decree that will qualify for being granted leave in a summary suit. The application for setting aside the ex-parte decree was set aside on the ground that he had not been served and he was living away at Rajasthan. The plaintiff was relying on the service of notice on the brother who was a member of the family and hence sufficient. There was also munadi service effected. I asked the counsel what is likely to be the defence that could qualify for the right to be given the leave. The counsel says that he never borrowed any money. I have observed that

there has been issued of notice prior to the institution of the suit through registered post and the counsel appearing on behalf of the respondent presents to me the service effected on the petitioner and the acknowledgment signed by him. There is surely a prima facie case for the plaintiff and a mere denial of execution is a method of prolonging the case; at least prima facie so. I would see the defence to be no more than a moonshine and I should allow the benefit of the defence for a full fledged contest, I will make possible such a right to the petitioner only on deposit of the entire suit cost and the suit claim in the court. The suit cost and the suit claim will be deposited within a period of 6 weeks from the date of the receipt of the copy of the order. If the amount is not deposited as directed, the order already passed will stand revived and the petitioner will have no right of defence and the court will be competent to take the decree as having become final. If the deposit is made, the plaintiff will be permitted only the benefit of withdrawal of portion of cost which is spelt in the decree and rest of the amount would stand invested in some nationalized bank yielding interest and the manner of how the amount will be disbursed shall abide by the final outcome in the suit.

The order already passed stands modified and the civil revision petition is allowed to the above extent. The interim order already passed directing security to be given is directed to be withdrawn.

(K.KANNAN)
JUDGE

24.05.2016

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