

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3216 of 2014

Date of Decision: 22.04.2016

Piara Singh

... Petitioner(s)

Versus

Surjit Kaur and Others

... 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. B.S.Bhalla, Advocate
for the petitioner(s).

Mr. Gaurav Sharma, Advocate
for respondents No.3 & 5.

Mr. Sunil Gupta, Advocate
for respondent No.4.

Mr. Sandeep Khunger, Advocate
for Punjab National Bank.

Shekher Dhawan, J.

Present petition is challenge to the order dated 21.3.2014, passed by learned Additional District Judge, Moga, whereby application filed by respondent No.3-Chhinder Pal Kaur and on behalf of her minor daughter-Amandeep Kaur under Section 5 of the Limitation Act, 1963

(hereinafter referred to as "the Act") for condonation of delay in filing the application for setting aside *ex parte* decree dated 19.2.2007.

Learned counsel for the petitioner submitted that application was moved after more than six years and there was no ground for setting aside the impugned order and the Court below simply ignored the pleadings under Order 41 Rule 21 CPC.

Learned counsel for the petitioner further submitted that the Court below failed to appreciate that respondents No.1 & 2 were served in person and the period of limitation for moving an application for hearing of appeal is 30 days. The Court below also failed to appreciate that process server had appeared in this case and respondents No.1 & 2 were served according to law and as such impugned order is liable to be set aside.

Learned counsel for the respondents submitted that the Court below has rightly decided the controversy because there was no valid service. More so, Amandeep Kaur was minor on the date of filing of appeal and on the day when Chhinder Pal Kaur, her guardian was served and present petition is without any merit and the same deserves dismissal.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, most of the facts are not disputed that application was filed under Section 5 of the Act for condonation of delay in filing an application for setting aside *ex parte* decree dated 19.2.2007. Undisputedly, application has been filed much beyond the period of limitation as has been provided under

Order 41 Rule 21 CPC which lays down that appeal can be re-heard if the Court is satisfied that notice was not duly served or applicant was prevented by sufficient cause from appearing in the appeal. For ready reference, relevant Order 41 Rule 21 CPC reads as under:

"21. Re-hearing on application of respondent against whom ex parte decree made— *Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellant Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.*"

The above provisions make it ample clear that it is for the Court to decide whether there was any ground for re-hearing of the appeal because *ex parte* judgment & decree. For that purpose, the Court is to see whether notice was duly served or that the applicant was prevented by sufficient cause from appearing on the date of hearing and if the Court thinks so, it shall re-hear the appeal on such terms as to costs or otherwise.

In the case in hand, the Court below has rightly observed that applicant Amandeep Kaur was minor on the date of filing of appeal and she was minor when service was effected and on the basis of that, minor was proceeded against *ex parte*. The Court had taken most

reasonable view and rightly observed that decree against minor is nullity and if appeal is admitted for re-hearing, the same would be beneficial for the appellant himself. That was essential to avoid multiplicity of litigation at a later stage. In that process, the Court had accepted the application and burdened the applicant with costs of ₹ 2,000/-.

There is absolutely no illegality in the order under challenge and the Court below has rightly decided to re-hear the appeal keeping in view the interest of the minor and at the same time compensating the present petitioner by way of payment of costs. Present petition, being devoid of any merit, stands dismissed.

(Shekher Dhawan)
Judge

April 22, 2016

"DK"