

Civil Revision No.3597 of 2015 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.3597 of 2015 (O&M)

Date of Decision: July 13, 2016

Bhupinder Kaur

...Petitioner

Versus

Sukhminder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.N.S.Swaitch, Advocate,
for the petitioner.

Mr.Chetan Mittal, Senior Advocate with
Mr.Sourabh Goel, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order, whereby the application of the respondent-defendants filed under Order 9 Rule 13 CPC for setting-aside of the ex-parte judgment and decree dated 14.8.2012 and ex-parte proceedings dated 26.7.2011, has been allowed.

Mr.N.S.Swaitch, learned counsel for the petitioner-plaintiff

submits that the respondent-defendants herein were served in the

forementioned suit and filed an application under Order 7 Rule 11 CPC seeking dismissal of the suit and, thus, they were aware of the pendency of the suit. They were proceeded ex-parte on 26.7.2011. No explanation has come forth for not moving the application with promptitude, whereas same was filed on 7.11.2012 after three months of the passing of the ex-parte judgment and decree. As per the cross-examination of the defendants, it has surfaced that they had been appearing in the Court on each and every date and thereafter stopped appearing. The application was hopelessly time barred. The limitation has to be seen from the date of passing of the judgment and decree and not from the date of acquiring the knowledge. In support of his contention, relies upon the judgments rendered by this Court in **Gian Singh Versus Rajesh Kumar, 2011(2) R.C.R. (Rent) 602 and Bal Krishan & Ors. Versus Dulla Ram, 2014 (1) Civil Court Cases 18 (P&H)** and, thus, prays for setting-aside of the impugned order.

Mr.Chetan Mittal, learned Senior Counsel assisted by Mr.Saurabh Goel, learned counsel appearing on behalf of respondent Nos.1 and 2-defendants submits that the counsel engaged, namely, Mr.Pardeep Kumar Nanchahal had given the respondents order (Annexure R-3) that the suit had been dismissed owing to the previous dismissal of the suit. The aforementioned order was believed, but later on

Halqa Patwari was approached to ascertain the position in the revenue record and the factum of the ex-parte decree surfaced. In these circumstances, the application was moved. The Court below had, after all deliberations on the oral and documentary evidence, much less circumstances with retard to the act of omission of the counsel, set-aside the order. In support of his submissions, relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Bhagmal and others Versus Kunwar Lal and others, (2010) 12 Supreme Court Cases 159 (Para 12)**. He submits that the ratio decidendi culled out in the aforementioned judgment is based upon identical facts and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book.

No doubt, the stringent provisions of Order 9 Rule 13 CPC along with Article 123 of the Constitution of India would have to be looked into, but the procedure is also hand made justice. The pith and substance of the case is that the respondent-defendants were made to believe their erstwhile counsel regarding the dismissal of the suit as he handed over them copy of the order (Annexure R-3) which reads thus:-

*“In the Court of Sh.Ajay Mittal, Civil Judge, Junior Division
Ludhiana.*

Bhupinder Kaur V/s. Sukhminder Singh etc.

In re: Suit for Declaration.

In view of the earlier suit between the same parties and the same cause of action which was decided by the court of SH.ARUNVIR VASHISTA the then Addl.Civil Judge, Senior Division Ludhiana vide order dated: 29-4-02 dismissed in the suit as withdrawn by the plaintiff in view of some compromise made out between the parties, the present suit is now fixed for consideration on application U/O 6 Rule 17 CPC and application under Order 7 Rule 11 of CPC for dismissal of the present suit in view of earlier decision.

SO AS TO DISMISS PRESENT SUIT FILED BY THE PLAINTIFF.”

Believing the statement of the counsel and the order, the respondents remained silent realising that the suit had been dismissed. On acquiring the knowledge from the revenue Halqa Patwari, they acquired the knowledge of the ex-parte proceedings. The conduct of the Advocate has also been noticed by the Court below. The ratio decidendi culled out in **Bhagmal's case (supra)**, would squarely apply to the facts and circumstances of the present case. The limitation in such circumstances would start from acquiring the knowledge as the respondents were kept in oblivion regarding the outcome of the suit. In my view, no hardship would be caused to the petitioner-plaintiff in case the respondent-defendants are allowed to contest the suit.

For the reasons aforementioned, the impugned order is upheld. The revision petition is disposed of and a direction is given to the trial Court to give one month's time to the respondent-defendants to file the written statement and thereafter grant 4-4 effective opportunities to the parties to lead evidence by taking the assistance of the Court. The trial Court is also directed to decide the suit as expeditiously as possible, preferably within a period of one year.

July 13, 2016
ramesh

(AMIT RAWAL)
JUDGE