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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3695-2014

Date of Decision : May 3rd, 2016

Rukman Kanwar

.... Petitioner

Versus

Krishan Chand Aggarwal

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. U.K.Agnihotri, Advocate,
for the petitioner.

Mr. Naveen Gupta, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India is challenge to the orders dated 14.03.2014 [Annexure P/1] passed by Additional District Judge, Ambala; dated 17.11.2011 [Annexure P/2] passed by Civil Judge [Senior Division], Ambala whereby application of the petitioner for setting-aside *ex-parte* order dated 23.05.2008 and *ex-parte* judgment and decree dated 03.06.2010 as well as objections of the petitioner were dismissed.

2. Relevant facts for the purpose of decision of this petition; that plaintiff – Krishan Chand Aggarwal filed a suit for decree for possession by way of ejectment of defendants – Umed Singh and Bano Devi from the

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shop/house in dispute and for recovery of Rs. 7,600/- as arrears of rent.

3. Defendants contested the suit and filed joint written statement *inter alia* taking the plea that the disputed premises was taken on rent from Naurati Devi wife of Kanshi Ram Aggarwal in the year 1976 and paid rent to her regularly upto the month of November, 1991. Defendants paid a sum of Rs.35,000/- in the presence of respectable. The plaintiff was never the landlord/owner of the premises in dispute. He has no concern with the property. The defendants are owners of the property in dispute and the notice under Section 106 of Transfer of Property Act, 1882 is illegal and not binding on the rights of the defendants.

4. Thereafter, the plaintiff filed an application under Order 15 Rule 5 (1) CPC for striking off the defence of the defendants. Notice of the said application was given to the defendants, but they did not file any reply to the application and as such, defendants were proceeded against *ex parte* vide order dated 23.05.2008 and ex-parte proceedings were initiated. After recording of *ex-parte* evidence, the Court below passed *ex-parte* judgment and decree dated 3.6.2010. The said judgment and decree were challenged before the Court of first Appeal and the first appellate Court dismissed the appeal.

5. Learned counsel for the petitioner submitted that during the pendency of the litigation, the suit property was included in the Municipal limits and as such, the proceedings in the civil suit for ejectment becomes futile and the decree became in-executable as the provisions of Haryana Urban [Control of Rent and Eviction] Act, 1973 [for short, "the Act"] came applicable. In support of his arguments, learned counsel for the petitioner placed reliance from the judgment of this Court in **Dhir Global Industries**

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Pvt. Ltd. Vs. Gajraj Singh 2014 (1) R.C.R. (Rent) 562; Ram Narain and others Vs. Ram Lal and others, 2003 (2) R.C.R. (Rent) 660; J.N. Katyal and another Vs. Krishan Kapur @ Bittu and another, 2005 (1) R.C.R. (Civil) 303; Sawan Ram Vs. Gobinda Ram and another, 1980 (2) RCJ 62.

6. Learned counsel for the respondent submitted that the present petition is only on the point whether the order dated 14.03.2014 [Annexure P/1] passed by Additional District Judge, Ambala; dated 17.11.2011 [Annexure P/2] passed by Civil Judge [Senior Division], Ambala are liable to be set-aside on any legal grounds and the petitioner has no case for setting aside the ex-parte order and decree because, in fact the petitioner had put in appearance before the Court of first instance and filed written statement and thereafter was proceeded *ex-parte*. Hence, there is absolutely no ground for setting-aside ex-parte order and the present petition is liable to be dismissed.

7. Having considered the submissions of learned counsel for the parties and after going through the judgments cited above, there is no dispute on legal provision that if during the pendency of litigation the suit property becomes part of Municipal limits, the provisions of the Act shall become operative and the civil suit shall not be maintainable. But in the present case, the facts are entirely distinguishable from the authorities cited by learned counsel for the petitioner, because the present petition is merely on the ground as to whether the order dated 23.05.2008 whereby *ex-parte* proceedings were initiated against the petitioner and the ex-parte judgment and decree dated 03.06.2010 are liable to be set-aside or not. If any order is illegal, the party has to make out a case that the Court below

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fell in error while passing the order. Admittedly, in this case, the petitioner had put in appearance and had filed written statement. So, it cannot be said that the litigation was not in the knowledge of the petitioner. On that ground, the Court of first instance dismissed the application for setting-aside *ex parte* order and thereafter the Court of first Appeal rejected the contention of the petitioner. At this stage, there is no ground to say and conclude that there is any illegality in the order dated 23.05.2008 whereby *ex-parte* proceedings were initiated against the petitioner. As such, the present petition is not maintainable as per law.

8. However, as regard to plea that during the pendency of litigation, the suit property has fallen into the Municipal limits and the proceedings under the Act were to be initiated and the civil suit was not maintainable, the petitioner shall be within his rights to take that plea before the Executing Court.

9. With the above observations, the petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 3rd, 2016
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