

Civil Revision No. 4664 of 2016

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4664 of 2016

Date of Decision: 2.8.2016

Pritam Singh

--- Petitioner

versus

Parkash Kaur

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. S.P.Soi, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition lays challenge to order dated 8.7.2016 passed by the Civil Judge (Junior Division), Nakodar whereby application filed by the respondent under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure (in short "CPC") for setting

aside the ex parte judgment and decree dated 5.10.2015 has been allowed.

Counsel for the petitioner would contend that suit titled “Pritam Singh vs. Parkash Kaur” for grant of permanent injunction in respect of agricultural land, detailed in head note of the plaint was filed by Pritam Singh. The respondent/defendant caused appearance in the suit through her counsel but later, her counsel pleaded no instructions on 18.9.2015 even before the written statement was filed and as a consequence, the respondent was proceeded against ex parte. The Court recorded ex parte evidence on 5.10.2015 and passed ex parte judgment and decree of even date. Later, the respondent filed the instant application under Order 9 Rule 13 read with Section 151 CPC for setting aside the decree dated 5.10.2015 that has been allowed by the trial court in clear violation of provisions of Article 123 of the Limitation Act, 1963 (for short “the Act”). It is argued with vehemence that under Article 123 of the Act, the period of limitation for filing of an application for setting aside the ex parte decree is 30 days from the

date of a decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree. Further dilating, it is argued that respondent Parkash Kaur was duly served and caused appearance in the proceedings, therefore, the limitation started from the date of ex parte decree but the court has committed a gross error rather illegality in allowing the application which was filed on 13.11.2015 against the decree dated 5.10.2015.

I have heard counsel for the petitioner, perused the paper book particularly the impugned order.

It is an admitted position of the case that the respondent engaged Sh. B.S.Sindhar, Advocate who filed vakalatnama on her behalf on 16.7.2015. The case was also fixed for compromise between the parties on 18.9.2015 but counsel for the respondent pleaded no instructions resulting in initiation of ex parte proceedings and the case was adjourned to 5.10.2015 for ex parte evidence of the petitioner. It is also borne out from the record that the application for setting aside the ex parte decree dated 5.10.2015 was filed on 13.11.2015 with delay of

7-8 days as it could be filed on 4th or 5th of November 2015. It may be true that as counsel for the respondent pleaded no instructions, it was not obligatory for the court to give a notice to her before initiating ex parte proceedings as has been held by this Court in *Smt. Jagdish Kaur Bagga vs. Jarnail Singh* 2012(2) R.C.R.(Civil) 689, *Kulwant Kaur vs. Shisha Singh* 2010(2) R.C.R.(Civil) 123, *Suresh Kumar vs. Smt. Daryai and others* 1996(2) Civil Court Cases 646 (P&H), *Lachman Dass vs. Food Corporation of India* 2007(3) R.C.R.(Civil)340, but there is nothing on record suggestive of the fact that counsel for the respondent either prior to pleading no instructions or subsequent thereto, sent an intimation to the respondent as a notice that she would no longer be represented by the counsel. However, the trial court has noticed that Pritam Singh, decree holder (RW-1 therein) admitted in his cross examination that he had shown ex parte decree on 28.10.2015 in the village panchayat and then the applicant came to know about the ex parte decree passed against her. Counsel for the petitioner has not made any submission to challenge correctness of this factual finding

recorded by the trial court. In the given facts and circumstances that the respondent was proceeded against ex parte on 18.9.2015 on the basis of no instructions pleaded by her counsel without any intimation to her coupled with evidence adduced in the proceedings for setting aside the ex parte decree particularly the observation recorded hereinbefore alongwith the fact that the application for setting aside the ex parte decree was filed on 13.11.2015 after a delay of just 5-6 days, I do not find any reason to interfere in the discretion exercised by the trial court by relying upon judgment of Hon'ble the Supreme Court ***Bhagmal vs. Kunwar Lal (SC) AIR 2010 S.C. 2991***. This apart, as per the settled position in law, technicalities cannot be allowed to stand in the way of substantial justice. As the discretion exercised by the trial court cannot be construed as arbitrary, whimsical or against any settled principles in law, order passed by the trial court is not rendered perverse much less absurd requiring intervention in exercise of supervisory jurisdiction of this Court.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

2.8.2016

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes