

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

CR No.5647 of 2016(O&M)

Date of decision:17.11.2016

Pritam Singh

....Petitioner

VERSUS

Balkar Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gurmeet Singh Saini, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 21.10.2015 (Annexure P-3) passed by the Civil Judge (Senior Division), Ferozepur whereby application filed by the respondents under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (in short 'CPC') for setting aside the ex parte judgment and decree dated 07.11.2011 has been allowed and as a consequence, civil suit titled Pritam Singh Vs. Balkar Singh and another has been revived for decision afresh

Counsel for the petitioner has submitted that even if there was some mistake in giving correct address of Balkar Singh –respondent No.1 who was stated to be resident of Mallanwala Khas, Tehsil Zira in place of Mallanwala but address of respondent No.2 Partap Singh was correctly mentioned in the plaint. It is further submitted that as the respondents/defendants had knowledge of pendency of the suit and avoided to appear in the proceedings, the Court has wrongly allowed the application for setting aside ex parte judgment and decree.

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

The trial Court in para 8 of the impugned order has noticed that both the respondents/applicants appeared in the witness box and reiterated their stand set up in the application. On the contrary, the petitioner did not adduce positive evidence to prove that the respondents/defendants were actually served. Counsel for the petitioner has not pointed out any error in the factual findings recorded by the trial Court in this regard. There is no material on record that the respondents/defendants were either aware of pendency of the proceedings or of the ex parte judgment and decree at any time prior to 23.05.2012, date on which they allegedly attained knowledge of the ex parte judgment and decree when applicant No.2 went to the office of Halqa Patwari. In this view of the matter, I do not find any reason to interfere in the discretion exercised by the trial Court providing an opportunity to the respondents to contest the proceedings and decision of the suit afresh.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

NOVEMBER 17, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no