

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5420 of 2014

Date of Decision: 19.01.2016

Shri Krishan Chand

... Petitioner(s)

Versus

Kanwar Pal and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Bhag Singh, Advocate
for the petitioner(s).

Mr. Gagandeep Singh, Advocate
for the respondents.

Shekher Dhawan, J.

Present petition is challenge to the order dated 18.7.2014, whereby application filed by the present petitioner for setting aside the *ex parte* order dated 21.8.2010 passed by learned Additional Civil Judge (Senior Division), Naraingarh was dismissed. However, the defendant was allowed to join the proceedings from that stage.

Petitioner had taken the plea that he had not received any summons in the case nor any notice was received through registered post and stated that he was proceeded against *ex parte* on 21.8.2010. So order dated 21.8.2010 whereby he was proceeded against *ex parte*

be set aside.

The respondents contested the application on the ground that *ex parte* order was passed in accordance with law. Service was duly effected upon the defendant. More so, notice was also served by substituted service i.e. by way of munadi. The applicant/defendant was having complete knowledge about the execution of agreement of sale between the parties and was watching the proceedings of the Court. Plaintiffs had examined more than eight witnesses to prove their case and learned trial Judge, after taking into consideration these facts, passed the impugned order and dismissed the application for setting aside the *ex parte* order. However, the petitioner/defendant was allowed to join the proceedings at that stage.

Learned counsel for the petitioner submitted that the Court below had taken note of the fact that two different counsel had put in appearance before the Court on 8.5.2010 and 9.6.2010. But they were not appearing on the instructions from the defendant and as such it was not a ground for dismissal of the application.

Learned counsel for the petitioner also took the plea that the petitioner has already filed complaints against those Advocates which are pending before the Bar Council of Punjab & Haryana at Chandigarh. Therefore, the present petition be accepted and impugned order be set aside.

Learned counsel for the respondents submitted that the defendant duly made representation before the Court below and two different lawyers appeared on his behalf before the Court on two

different dates. More so, the defendant was duly served. Learned counsel for the respondents also took the plea that even such a plea was not taken in the application for setting aside the *ex parte* proceedings and the Court below has passed the order which does not require any interference.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that learned trial Judge has considered all the circumstances. The civil suit was filed on 23.1.2010 and notice was ordered to be issued for 15.2.2010. Thereafter, on 15.2.2010, notice issued to the defendant was not received back and fresh notice was ordered to be issued for 9.5.2010. However, the case was taken up on 8.5.2010 and the Court below passed the following order:-

*"Present: Sh. Vinod Dhiman, counsel for the plaintiffs.
Smt. Anupam Sharma, counsel for the
defendant.*

*File taken up today as both the parties
appeared and requested the case to reschedule. Memo of
appearance on behalf of deft. Filed. Since both the parties
appeared, therefore, case stands adjourned to 9.6.2010 for
filing power of attorney and written statement.*

*(Sudeep Goel)
ACJ(SD)/8.5.10"*

The matter was adjourned for 9.6.2010 and on that date, the Court below passed the following order:

*"Present: Sh. Vinod Dhiman, counsel for the plaintiffs.
Sh. Rajiv Sharma, counsel for the defendant.*

Fresh memo of appearance on behalf of

defendant filed. Written statement not filed. Date is sought. Heard. Allowed. Now, to come upon 21.8.10 for filing power of attorney and written statement.

*(Sudeep Goel)
ACJ(SD)/9.6.10"*

On the adjourned date i.e. 21.8.2010, none appeared for the defendant and *ex parte* evidence was recorded by the Court below.

The above detailed interim orders, passed by the Court below, established that the defendant was issued summons on different dates and thereafter, he was duly represented in a suit for symbolic possession by way of specific performance of agreement of sale. Thereafter, the defendant chosen not to put in appearance and was proceeded against *ex parte*. The said order was challenged before the Court below, which has also passed the detailed order giving the reasoning that the defendant was duly served and was represented through his counsel and thereafter, the defendant, for the reasons best known to him, chosen to be proceeded against *ex parte* and as such the application for setting aside the *ex parte* proceedings was rightly dismissed by the Court below. More so, vide order dated 18.7.2014, the defendant was allowed to join the proceedings at the stage where the case was at that time. The said order does not call for any interference.

Present petition is without any merit and the same stands dismissed.

**(Shekher Dhawan)
Judge**

January 19, 2016
"DK"