IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5674 of 2013 (O&M)
Date of decision : 18.03.2016

Assistant Collector of Customs

...Petitioner

Versus

M/s Vishnu Pipes Industries Private Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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. Kamal Sehgal, Advocate for the petitioner.

Mr. Veneet Sharma, Advocate for the respondent No.1.

Mr. Ashim Aggarwal, Advocate for the respondent No.3.

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AMIT RAWAL, J. (Oral)

CM No.19124-CII of 2013 & 19125-CII of 2013

For the reasons stated in the application, which is duly supported by an affidavit, delay of 9 days in filing and 40 days in refiling the revision petition is condoned.

Applications stands allowed.

Main case

The petitioner-Assistant Collector of Custom is aggrieved of the order dated 03.11.2009 declining the application filed under Order 9

Rule 13 CPC for setting aside the ex parte judgment and decree dated 12.02.1999 and as well as the judgment dated 07.03.2013 vide which the appeal was dismissed.

Mr. Kamal Sehgal, learned counsel appearing on behalf of the petitioner submits, that entire transaction with regard to the claim and the refund of the claim of the custom had taken place at Mumbai, whereas registered office of the respondent-company admittedly is at Baddi. The Court at Amritsar did not have jurisdiction, in essence, the respondent-plaintiff at its own convenience invoked the jurisdiction of Amritsar Court as its head office is located at Amritsar. The claim of the refund of ₹1,93,999/- for shortage of PVC Resin was submitted on 07.08.1990 which was sanctioned on 15.11.1990 and given by cheque No.928629 dated 08.01.1991 whereas decree for a sum of ₹2,00,000/- also included aforementioned amount. He submits that no doubt respondent-plaintiff impleaded the local office at Amritsar was as party, though appeared but later on, for unknown reasons absented because Amritsar office did not have papers with regard to the transaction having conducted at Mumbai. No instrumentality of the State can be thrown out in case decree is based upon fraud. He further submits that suit ex facie was not maintainable in view of the constitution judgment of Hon'ble Supreme Court rendered in *Mafatlal Industries Ltd. Vs. UOI, 1997(89) ELT 247(SC), Addl. Director General, DTE. General of Central Excise Vs. Kiran Machines, 2015(325) ELT 469 (SC).*

Both the Courts below have not appreciated the aforementioned fact and declined the application by confining to the contents of the application and thus, prays for setting aside of the order.

Mr. Veneet Sharma, learned counsel appearing on behalf of the respondent-plaintiff submits that witness, of the local office though at one point of time absented but again appeared for cross-examination. Petitioner miserably failed to prove that they were never served with the summons of the suit whereas it has been proved on record that registered notice was sent and had been acknowledged by the Department situated at Mumbai. No explanation, much less, cogent and reasonable has come forth in not appearing before the trial Court when the suit was pending, therefore ex parte judgment and decree cannot be set aside, much less, application was hopelessly time barred, much less, belated and thus prays for dismissal of the petition.

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

On going through the ex parte judgment and decree, it is evident that there is reference to the shortage certificate Ex.P2 and the shortage of the value to the tune of ₹1,93,999.57 paise and the excise custom duty was paid but the said factum has not been taken into consideration while admitting the suit. I am of the view that there is some force in the submission of Mr. Sehgal that the element of the refund has not been looked into. In case some opportunity is granted to defend, much less, lead the evidence, no harm and prejudice would be caused to the respondent-plaintiff by setting aside impugned order subject to the terms and conditions which this Court may deem it appropriate, much less, the cost which the respondent-plaintiff has to pay to defend the present revision petition as well as application/appeal before the Courts below. The approach adopted by the officers of the petitioner is not appreciable but the fact remains that exchequer of the Central Government is involved and serious allegation have been made with regard to non-adjustment of the refund of money, thus, in my view that petitioner-defendant should be given effective opportunity to file the written statement putforth defence by limiting them to lead evidence within time frame.

Accordingly, impugned orders are set aside. Impugned judgment and decree dated 12.02.1999 is set aside. The petitioner-defendant is granted one month's time to file written statement and thereafter parties at the trial Court shall be granted 3-3 effective opportunities to lead evidence in support of their claim and trial court shall decide it afresh preferably within a period of eight months from the date of receipt of certified copy of the order, subject to the cost of ₹10,000/-.

Revision petition stands allowed.

18.03.2016 **(AMIT RAWAL)**
pawan **JUDGE**