

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

CR No. 5781 of 2015

Date of decision:09.12.2016

Sunil Kumar

.... Petitioner

Versus

Kewal Krishan and others

.... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**Present:** Mr. Rahul Rampal, Advocate,
for the petitioner.Mr. Nitin Thatai, Advocate,
for the respondents.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against the orders dated 20.08.2014 passed by the Civil Judge, Junior Division, Ludhiana and dated 23.07.2015 passed by the Additional District Judge, Ludhiana, whereby application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure (in short ' the CPC') for setting aside the ex parte judgment and decree dated 12.09.2011 was dismissed by the trial Court and the order passed by the trial Court has been affirmed in appeal.

Counsel for the petitioner has submitted that Kewal Krishan and others filed a suit for separate possession in respect of the house (detailed in head note of the plaint) as well as recovery qua use and occupation charges, in which the petitioner was arrayed as defendant No. 1. The suit was instituted in the year 2004 and was eventually decreed vide judgment and decree dated 12.09.2011. In the

suit, the petitioner caused appearance, filed the written statement and remained attending to the proceedings through counsel till 16.08.2011. Subsequent thereto, counsel for the petitioner suddenly absented from the proceedings and as a consequence, ex parte decree dated 12.09.2011 was passed. It is further submitted that the petitioner did not learn about passing of the ex parte decree till the time a bailiff from the Court went to the spot for delivery of possession and immediately thereafter, the present application was filed by the petitioner on 17.12.2012 for setting aside the ex parte judgment and decree. It is vehemently argued that the very fact that counsel on behalf of the petitioner was perusing the proceedings till 16.08.2011 and by that time, the respondents/plaintiffs had already completed their evidence, the petitioner had no intention to absent from the proceedings. Another submission made by counsel is that the trial Court without framing any issue and providing opportunity to adduce evidence negated claim of the petitioner, therefore, the impugned order may be set-aside and the matter is remanded to the trial Court for decision of the application under Order 9 Rule 13 CPC afresh, after framing of issues and adducing evidence by the parties.

Counsel for the respondents, on the contrary, has supported the impugned orders with the submission that as the petitioner caused appearance in the civil suit, therefore, had knowledge of pendency of the suit, thus in view of the provisions of Article 123 of the Limitation Act, he could maintain an application for setting aside the ex parte judgment and decree only within a

period of 30 days from the date of passing of the decree dated 12.09.2011. It is further argued that the petitioner did not file an application seeking condonation of delay by invoking the provisions of Section 5 of the Limitation Act.

I have heard learned counsel for the parties and perused the paper book particularly the orders impugned.

There is no dispute between the parties with regard to the facts on record. The petitioner appeared in the case, filed the written statement, remained present till 16.08.2011 and thereafter absented from the proceedings. The suit ultimately culminated in the judgment and decree dated 12.09.2011. Admittedly, the application for setting aside ex parte judgment and decree was filed on 17.12.2012 but without an application seeking condonation of delay of more than one year. Keeping in view the clear provisions of Article 123 of the Limitation Act, the petitioner, in the circumstances of the case could file the application under Order 9 Rule 13 CPC within a period of 30 days from the passing of the decree dated 12.09.2011. As the application filed by the petitioner is clearly barred by limitation, no useful purpose would have been served by framing of issues and permitting the petitioner to adduce evidence except at the cost of wastage of time and energy of all the stake holders particularly the Court, when otherwise the Courts are heavily burdened with pendency of cases.

In this view of the matter, I do not find any error much less illegality in the impugned orders warranting intervention.

For the forgoing reasons, the petition fails and is accordingly dismissed.

No order as to costs.

09.12.2016
PA

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No