

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 6724 of 2013(O&M)
Date of decision : April 5, 2016

Subedar @ Subbi and others

..... Petitioners

Versus

Gulzar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Adarsh Jain, Advocate
for the petitioners.

Mr. R. S. Sihota, Senior Advocate with
Mr. B. R. Rana, Advocate
for respondent Nos.1 to 39.

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

Amit Rawal, J (oral).

The petitioner-plaintiff is aggrieved of the order under challenge dated 8.10.2013 whereby the application filed under Order 9 Rule 13 CPC filed at the instance of defendants for setting aside ex-parte order dated 11.10.2008 and ex-parte judgment and decree dated 8.9.2009 has been allowed.

Mr. Adarsh Jain, learned counsel appearing on behalf of the petitioners submits that civil suit at Palwal was filed on 9.10.2002. The same was transferred on establishment of Division at Nuh and from Nuh to Hathin and even in the proceedings before the Court at Hathin the counsel for defendants appeared. These

facts are fortified from the order dated 6.8.2008 (Annexure P-3) thereafter on the adjourned date i.e. 11.10.2008 defendants were proceeded against ex-parte which resulted into passing of ex-parte judgment and decree. The application is wanting explanation of having not moved within 30 days from the date of passing of the judgment. The respondents put in appearance and filed written statement. There cannot be any plea of non-receipt of notice viz-a-viz transfer of the suit in view of the fact that the case was represented through counsel at Hathin. These facts have not been noticed by the trial court, thus, impugned order is not sustainable in the eyes of law.

Mr. R. S. Sihota, learned Senior counsel appearing on behalf of the respondents submits that no doubt the counsel appeared on behalf of the defendants at Hathin but in case he did not have any instructions, the trial court was enjoined upon an obligation to send notice to the parties in order to avoid misunderstanding and after following such procedure could have initiated ex-parte proceedings. Decree is sought to be implemented by taking possession, thus, on acquiring knowledge of the same, an application was filed thus, cannot be said to be barred by law of limitation as it was moved within 30 days from the date of acquiring the knowledge.

I have heard learned counsel for the parties, appraised the paper book and of the view, that there is no force in the contentions raised by learned counsel for the petitioners for the

reason that in case the lawyer was engaged on behalf of the defendants, the trial court was obliged to issue notice to the other party as it tantamounts to pleading no instructions. It is a settled law that the party could not suffer for lapse on the part of lawyer. This view of mine is supported by the judgment rendered by Hon'ble Supreme Court in **Rafiz and another Vs. Munshi Lal and another** **AIR 1981 SC 1400.**

In view of the aforementioned facts and circumstances, and in view of the fact that pleadings are complete and issues have been framed, I deem it appropriate to modify the ex-parte judgment and decree. The trial court is directed to grant three-three effective opportunities to the parties to lead evidence, thereafter conclude the trial and decide the case within a period of ten months thereafter.

With the aforementioned modification, the impugned order is modified to the above extent and rest of the impugned order is upheld. The revision petition stands disposed of.

The parties through their counsel are directed to appear before the trial court on 5.5.2016.

(AMIT RAWAL)
JUDGE

April 5 , 2016
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