

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

C.R.No.7634 of 2015 (O&M)

Date of Decision: May 11, 2016

Mithu Singh

...Petitioner

Versus

Sita Ram

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Sidharth Gupta, Advocate,
for the petitioner.

Mr.Rishabh Gupta, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Petitioner-defendant is aggrieved of the dismissal of the application filed under Order 37 Rule 4 CPC for setting-aside of the ex-parte judgment and decree dated 6.1.2011.

Mr.Sidharth Gupta, learned counsel appearing on behalf of the petitioner-defendant submits that the petitioner had wrongly noted the date of the aforementioned suit as 1.6.2011 instead of 6.1.2011 and on coming to know about the ex-parte judgment and decree, moved the application on 18.4.2011, but the same has erroneously been dismissed. No prejudice would be caused to the respondent in case one opportunity is granted to the petitioner to move an application for contesting the suit as there are moot points as the suit is based upon the pronote. The decree has been obtained with fraud and collusion. The same is not sustainable.

Mr.Rishabh Gupta, learned counsel appearing on behalf of the

respondent-plaintiff submits that the procedure under Order 37 Rule 4 CPC is totally different. It is not on the date of appearance, a person has to appear, but from the date of receipt of the notice, which was received on 14.11.2010. The defendant has to apply for leave to defend as per the provisions of Order 37 Rule 2 PC. He has handed over photo copy of the summons, which also bear the signature of Mithu Singh. The signature has been compared with the signature on the power of attorney available in the paper book and apparently the same appears to be of one person, thus, noting the date as 1.6.2011 instead of 6.1.2011 would be meaningless. Order 37 CPC provides for decretal of the suit in case of no defence.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the petitioner has miserably failed to lead any direct and cogent evidence with regard to noting the date as 1.6.2011. The date of appearance fixed in the suit was 6.1.2011 and summons were received on 14.11.2010. Upto 23.11.2010, he was to apply for leave to defend as per the provisions of Rule 2 of Order 37 CPC, so the appearance on the date fixed or the subsequent date would be meaningless as the rigors of Order 37 Rule 2 CPC are very strict and in case of non-appearance of the defendant, the decree is required to be passed, which has been passed in accordance with law.

No ground for interference is made out. The order under challenge is perfect and valid. The same cannot be said to have been passed without jurisdiction.

Revision petition stands dismissed.

May 11, 2016
ramesh

(AMIT RAWAL)
JUDGE