

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7652 of 2013
Date of decision:10.03.2016

Yash Raj Goel

... Petitioner

Vs.

Municipal Council, Gobindgarh

... Respondent

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. Santosh Sharma, Advocate
for the petitioner.

Mr. G.S.Attariwala, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The petitioner-judgment debtor/defendant is aggrieved of the dismissal of the application bearing No.41 dated 13.09.2007 for setting aside of the ex-parte judgment and decree dated 18.01.2007, as well as, ex parte proceedings dated 02.08.2006 and appeal filed against the order dated 16.4.2012 has also been dismissed.

Mr. Santosh Sharma, learned counsel appearing on behalf of the petitioner-judgment debtor submits that petitioner/defendant had appeared in the suit for recovery on 19.11.2004 and filed the written statement on 09.12.2004. The counsel informed that defendant would be required only when the case reached at the stage of defendant's evidence. However, on

02.08.2006, ex parte proceedings were initiated when the case was listed for plaintiff's evidence. It was the counsel, who was to cross examine the witnesses of the plaintiff, in accordance with the averments taken in the written statement, therefore, petitioner-defendant was not lacking in pursuing the case with due diligence. Both the Courts below have not appreciated the aforementioned facts. In support of his aforementioned contention, relied upon the judgment of the Hon'ble Supreme Court in **Himalayan Group Housing Society vs. Balwan Singh 2015(7) SCC 373**.

Mr. G.S.Attariwala, learned counsel appearing on behalf of the respondent submits that application is lacking reasonable explanation, much less, cogent reasons and is also barred by law of limitation as the limitation to file application is 30 days from the date of knowledge, whereas, decree was passed on 18.01.2007 and application has been filed in September, 2007. No explanation has come forth to file the application beyond the period of 30 days from the passing of the judgment and decree and rightly so, the application has been dismissed. He, thus, prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that as per the contents of the letter dated 29.08.2007, the respondent-plaintiff informed the petitioner about the passing of the judgment and decree dated 18.1.2007. In these circumstance, the petitioner acquired the

knowledge of the ex parte judgment and decree and the application for setting aside was filed on 13.9.2007, i.e, within 30 days from the acquisition of the knowledge, therefore, the application was filed within limitation.

I am also in agreement with the submissions made by Mr. Sharma, that ex parte proceedings were initiated on 02.08.2006 as the suit was slated for respondent-plaintiff's cross examination, in essence, defendant's evidence had not started. He could not have been thrown out on this ground.

Keeping in view the facts and circumstances of the present case, I am of the view that both the Courts below ought to have not dismissed the application. The impugned orders are hereby set aside. The application under Order 9 Rule 13 of the Code of Civil Procedure is allowed and the ex parte judgment and decree dated 18.01.2007 is set aside. The petitioner-defendant is given two opportunities to cross-examine the plaintiff's witnesses and thereafter two more opportunities to lead his evidence. Thereafter, the trial Court shall decide the suit as expeditiously as possible, preferably within a period of six months from the date of receipt of certified copy of this order.

Accordingly, revision petition stands allowed subject to costs of ₹5,000/-.

(AMIT RAWAL)
JUDGE

March 10, 2016
savita