

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.79 of 2016 (O&M)
Date of Decision.11.01.2016

Kulwant Singh

.....Petitioner

Vs.

Vijay Pal

.....Respondent

Present: Mr. Arun Yadav, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

-.-

K. KANNAN J. (ORAL)

1. The revision petition is at the instance of the defendant who suffered an ex parte decree against him on 06.09.2005. It was the suit for specific performance where he was alleged to have been served with notice through Court and set ex parte. The suit for specific performance was instituted in the year 2003 and the summons in Court had recorded the fact of service in the year 2003 itself and the Court took two years time before it passed the decree. The decree holder took steps for execution and the notice in execution petition was received admittedly in January, 2006. He, however, filed application to set aside the decree on 17.07.2006 contending that he came to know about decree only in May, 2006.

2. On the application filed for setting aside the ex parte decree on plea that he had not been served with summons at all and the service alleged to have been effected was a fabricated endorsement, the decree

holder examined the court process server and in the cross-examination, he admitted that he did not secure the identity of the judgment debtor through any independent witness. This, according to the judgment debtor, was a stout ground to set aside the decree. The Court of 1st Instance held that there was no reason for the decree holder to secure a false endorsement when the address in the summons, the name of the judgment debtor and the father's name were correct and the contention that he had fabricated the endorsement could not be true. In appeal, the Appellate Court considered the fact that even if it were to be contended that the summon had not been served and the endorsement of service by the process server without any identification could not be true, the Court posed the question as to how in spite of service of notice in execution petition in January 2006, the defendant could not take immediate steps to have the decree set aside. It found that the contention that he came to know about it only in May, 2006 was false and could not be supported by the admission of the service of the summons in execution in January, 2006 itself. There was simply no justification for the defendant to still wait for another six months to come with application to have the ex parte decree set aside in July, 2006. The two Courts below have held that there had been no ground made to set aside the ex parte decree and I do not also find any ground to set aside the ex parte decree.

3. Learned counsel for the petitioner states that the petitioner has lost all the property in the decree and being a rustic villager, he must be granted one opportunity to contest the case on merit. This is a suit instituted in the year 2003. It has gone nearly a decade and more to

examine whether the decree must be set aside or not. If the ground made for setting aside the ex parte decree was found to be wrong at least from the date when he ought to have known that he was served with notice in execution, there being no justification for not coming to the Court within time I find no ground as possible for setting aside the ex parte decree.

4. The orders passed by the Courts below are confirmed and the revision petition is dismissed.

(K. KANNAN)
JUDGE

January 11, 2016
Pankaj*