

CR-8022-2015

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-8022-2015

Date of decision : 25.01.2016

Babu Ram

... Petitioner

Versus

Lalit Mohan

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. C.B. Goel, Advocate
for the petitioner.

REKHA MITTAL. J.

The present petition filed under Article 227 of the Constitution of India lays challenge to orders dated 13.11.2013 passed by the Civil Judge (Senior division), Kurukshetra and dated 08.09.2015 passed by the Additional District Judge, Kurukshetra whereby the application filed by the petitioner for setting aside the ex-parte judgment and decree dated 26.08.2006 has been dismissed.

In brief, Lalit Mohan respondent filed a suit for possession by way of specific performance of an agreement dated 26.06.2002 which was decreed ex-parte vide judgment and decree dated 26.08.2006 passed by the learned trial Court. The petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure (for brevity 'CPC') for setting aside the ex-parte judgment and decree inter alia on the following

grounds:-

1. He engaged Sh.M.S. Baweja, Advocate as counsel who told him that there was no need to come on each and every date and he would inform when his presence would be needed in the Court.
2. On 31.08.2005, his counsel did not appear before the Court and he was proceeded against ex-parte and the case was adjourned to 29.11.2005 for arguments.
3. The fact of ex-parte judgment and decree passed on 26.08.2006 came to his notice when the respondent along with revenue officials came to the disputed land to take possession of the property in question.

The respondent filed reply to the application seriously contesting claim of the petitioner-applicant. It is pleaded that the application is a ploy to delay the proceedings and deprive the respondent of the fruits of the decree passed in his favour. The applicant had knowledge of the case from the very beginning. He got himself proceeded ex-parte after filing of the written statement with a malafide intention.

The learned trial Court framed issues, permitted the parties to adduce evidence in support of their respective claims and after hearing counsel for the parties in the light of materials on record, answered the main issue against the petitioner and as a result, the application for setting aside ex-parte judgment and decree was ordered to be dismissed. The

appeal preferred by the petitioner against the order passed by the trial Court did not find favour with the Additional District Judge, Kurukshetra and the findings recorded by the trial Court were affirmed.

Counsel for the petitioner has assailed the orders passed by the courts below primarily on two counts. The first submission made by counsel is that the trial Court was obligated to issue a notice to the petitioner when his counsel failed to put in appearance instead of proceeding ex-parte against the petitioner. For this purpose, he has placed reliance upon judgment of Hon'ble the Apex Court *Malkiat Singh Vs. Joginder Singh, 1998(1) R.C.R. (Civil) 277*.

The second submission made by counsel is that there was no proper and due service of the petitioner, therefore, ex-parte judgment and decree passed by the trial Court is liable to be set aside.

Counsel has also made a vain attempt to argue in regard to the merits of the suit by contending that the petitioner is a rustic villager and the agreement propounded by the respondent is the result of taking undue advantage of his innocence and position viz-a-viz the respondent.

I have heard counsel for the petitioner, perused the records particularly the orders impugned in the petition.

It is pertinent to mention, at the outset, that counsel for the petitioner has not assailed the findings recorded by the courts below on merits of the application in view of the grounds set up in the application for setting aside ex-parte judgment and decree . However, it is an admitted

position of the case that the petitioner caused appearance in the civil suit, filed his written statement and was later proceeded against ex-parte on 31.08.2005 and suit was ultimately decreed vide judgment and decree dated 26.08.2006. The very fact that the petitioner had put in appearance before the trial Court and filed the written statement is sufficient to hold that any flaw in effecting service of the petitioner would not enure to his benefit.

The plea that the trial Court was required to issue a notice to the petitioner as his counsel failed to put in appearance on 31.08.2005 by relying upon the judgment in *Malkiat Singh's case (supra)* is misconceived and merits rejection. Before adverting to the judgment, it is appropriate to mention that once a party has engaged a counsel and left it to his counsel to attend the proceedings, he cannot claim that a notice needs to be issued to him in case his counsel commits any default in appearance or prosecuting the proceedings. Even otherwise, there is nothing on record suggestive of the fact that the petitioner has initiated any action against his counsel for his failure to appear in the Court despite his having given the alleged understanding that there was no need for the petitioner to come to the Court on each and every date or he would inform him when his presence would be needed in the Court.

Coming to the judgment cited by counsel, it has got no bearing on the case in hand. A relevant extract from para 4 of the judgment in *Malkiat Singh's case (supra)* reads as follows:-

“There is no denying the fact that the appellants had engaged a counsel to defend them in the civil suit. The counsel for the appellants pleaded “no instructions” but the court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions in the court. It is nobody's case that the counsel informed them after he had reported no instructions to the court. The appellants only came to know about the order dated 18.11.1991 and the ex-parte decree dated 8.2.1992 when they approached their counsel on 6.6.1992. It was within four days thereafter that the appellants filed an application under Order 9, Rule 13, C.P.C. for setting aside the order dated 18.11.1991 and the decree dated 8.12.1992.”

Indisputably, counsel for the petitioner did not plead no instructions, therefore, the trial Court was not obligated to issue a notice to the petitioner in the circumstances of the present case.

Any submissions made by counsel in regard to merits of the controversy involved in the suit, the same can not be appreciated unless there is a challenge to the ex-parte judgment and decree passed by the trial Court, on merits.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed in limine. No order as to costs.

(REKHA MITTAL)
JUDGE

January 25, 2016.

Davinder Kumar