

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

CR No.1100 of 2017.

Date of Decision: 15.02.2017.

Brij Inder Sharma

....Petitioner.

VERSUS

Vijay Kapoor (since deceased) through his legal heirs Sunam Kapoor etc.
and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Veneet Sharma, Advocate for the petitioner.

SNEH PRASHAR, J.

Assailing the order dated 21.11.2016 passed by learned Civil Judge (Junior Division), Amritsar by virtue of which the application under Order IX Rule 13 read with Section 151 of the Civil Procedure Code for setting aside the exparte judgment and decree dated 19.04.2011 filed by contesting respondent was allowed, the instant petition has been filed.

The submissions made Mr. Veneet Sharma, learned counsel representing the petitioner have been considered.

The facts indicated by learned trial Court in the impugned order are that respondent Vijay Kapoor (since deceased and now represented by his legal representatives) had filed a suit for recovery of Rs.42,894/- against the petitioner and one Rajinder Kumar Sharma. On notice of the suit, the petitioner and his co-defendant appeared and filed his written statement as well as the counter claim. When the suit as well as the counter claim were

fixed for 03.09.2009, neither the plaintiff-respondent nor the petitioner and his co-defendant appeared in the Court as a result of which the suit as well as the counter claim were dismissed for want of presence of the parties. Subsequently, on 04.09.2009 the petitioner and his co-defendant moved an application for restoration of their counter claim which was restored by the Court and an exparte decree dated 19.04.2011 was passed against the respondent-plaintiff. In September, 2011 when the respondent came to know about the exparte decree, he filed an application for setting aside the exparte decree.

Learned counsel for the petitioner argued that there was no ground for setting aside the exparte judgment and decree passed by learned trial Court in due process of law. In his application, the respondent-plaintiff did not mention the date on which he had come to know about the exparte judgment and decree. Learned counsel also submitted that no substantive and reliable evidence could be produced by the respondent-plaintiff to prove that the parties had entered into a compromise and complying with the terms of the said compromise the respondent-plaintiff had not appeared before learned trial Court on the date on which his suit was dismissed in default.

The arguments of learned counsel for the petitioner are completely devoid of merit. The facts, which led learned trial Court to set aside the exparte judgment and decree dated 19.04.2011, were incorporated in Para No.17 of the impugned order which read as under:-

“I have perused the file of civil suit titled as “Vijay Kapoor versus Rajinder Kumar Sharma and others” and the perusal of the order dated 3rd September 2009 reveals that both the parties did not appear on the said date and the suit was

dismissed in default under order 9 rule 3 CPC and the file was ordered to be consigned to record room. Perusal of the file further reveals that the respondents/ counter claimants moved restoration application for their counter claim on 04.09.2009 and no notice of this application was ever issued to the applicants/plaintiffs and further the order dated 5th of November 2009 reveals that the restoration order qua Counter Claim was passed in the absence of Plaintiffs/applicants and even after restoration of the Counter Claim, no notice of the Counter Claim was issued to the Plaintiffs and there is no order by which the Plaintiffs/ applicants were proceeded against exparte since the restoration application dated: 04.09.2009.”

Apparently, the petitioner who had filed the counter claim as well as the respondent who filed the suit were both absent on 03.09.2009 i.e. the date on which the suit as well as the counter claim were dismissed. In the light of said factum in the backdrop, prima facie there appears no reason to disbelieve the respondent-plaintiff that the parties had arrived at a compromise as a consequence to which they had decided not to appear in the Court. Even if it is accepted for the sake of argument that there was no compromise between the parties, yet when the petitioner filed an application for restoration of the counter claim, it was necessary for the Court to have given notice of the said application to the respondent-plaintiff. The application for restoration could not have been decided at the back of the respondent-plaintiff. Needless to say that no party can be condemned

illegal and therefore, neither the order passed restoring the counter claim of the petitioner and his co-defendant nor the exparte decree passed in their favour could be left to sustain. From that it would also follow that for getting such illegal order and exparte judgment and decree set aside the lapse of limitation period would not be an obstruction.

In the above premise, the order passed by learned trial Court suffers from no illegality or perversity warranting interference by this Court and the petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

15.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**