

CR No. 2494 of 2017 (O&M)

Amit Kumar
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**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No. 2494 of 2017 (O&M)
Date of decision: 6.4.2017**

Dharambir

...Petitioner

Versus

Kranti and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Bharat Bhushan Sharma, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Twin questions of law that arise for consideration of this Court in
the instant revision petition are:-

- I) Whether the principle of merger would apply in the present case and ex parte award dated 7.6.2012 passed by the learned Motor Accident Claims Tribunal ('MACT' for short) would merge in the appellate order dated 26.2.2014 passed by this Court in FAO No. 5252 of 2012
- II) Whether the statutory bar provided in the Explanation to Order IX Rule 13 of the Code of Civil Procedure ('CPC' for short), would be attracted once the ex parte award has merged in the appellate order passed by this Court.

Present revision petition filed under Article 227 of the Constitution of India, is directed against the order dated 9.2.2017 (Annexure P-1) passed by the learned MACT, dismissing the application of the petitioner for setting aside the order dated 12.3.2012, whereby he was proceeded against ex parte and also the ex parte award dated 7.6.2012.

Heard learned counsel for the petitioner.

A bare perusal of the impugned award dated 9.2.2017 passed by the learned MACT would show that ex parte award dated 7.6.2012 came to be challenged before this Court by way of FAO No. 5252 of 2012. Said appeal was allowed by this Court vide order dated 26.2.2014, thus, ex parte award dated 7.6.2012 passed by the learned MACT merged in the appellate order passed by this Court. In such a situation, Order IX Rule 13 (Explanation) of the Code of Civil Procedure ('CPC' for short), immediately comes into play and the application of the petitioner, seeking setting aside the ex parte award dated 7.6.2012 would not be maintainable. Having said that, this Court feels no hesitation to conclude that the learned MACT was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

Since the entire case of the petitioner revolves around the provisions contained in Order IX Rule 13 CPC, it would be appropriate to reproduce the same for ready reference and it reads as under:-

ORDER IX RULE 13, CPC

"Setting Aside decree ex parte against defendant.-- In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was

prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient to appear and answer the plaintiff's claim.]

[Explanation Where there has been an appeal against a decree passed ex-parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree]."

It is a matter of record and not in dispute that ex parte award dated 7.6.2012 passed by the learned MACT was appealed against before this Court in FAO No. 5252 of 2012. It is also not in dispute that FAO No. 5252 of 2012 was allowed by this Court, vide order dated 26.2.2014. Thus, principle of merger would apply and ex parte award dated 7.6.2012 passed by the learned MACT would merge in the appellate order dated 26.2.2014 passed by this Court. Any other interpretation would be violative of Order IX Rule 13 (Explanation) CPC and also the legislative intent behind it.

Once the principle of merger applies, as noticed hereinabove, statutory bar contained in Order IX Rule 13 (Explanation) CPC would be immediately attracted. In such a situation, application under Order IX Rule 13 CPC would not be maintainable, nor the learned trial court would have any jurisdiction to entertain such an application for setting aside the ex parte award, as it had already merged in the appellate order. It is the only purposeful and harmonious construction of Order IX Rule 13 (Explanation) CPC. Any contrary interpretation will defeat the very object of the provisions of law contained in the explanation to Order IX Rule 13 CPC.

Proceeding on a constructive and pragmatic approach, taking a holistic view of the matter and also to do complete and substantial justice between the parties, both the questions of law posed hereinabove, are decided in the abovesaid terms and the same are answered accordingly. It is held that principle of merger as well as statutory bar would be attracted against the petitioner and his application was rightly dismissed by the learned MACT vide impugned order dated 9.2.2017, which deserves to be upheld.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

P. Kiran Kumar Vs. A.S. Khadar, 2002 (5) SCC 161 (SC)

Bhanu Kumar Jain Vs. Archana Kumar and another, 2005 (1) SCC 787 (SC)

Bhulan Rout and another Vs. Lal Bahadur Yadav, 2004 (13) SCC 679 (SC)

Kartar Singh Vs. Jagat Singh and others, 1971 PLJ 348 (P&H)

Rattan Singh Vs. Pritam Singh and another, 1987 (2) PLR 607 (P&H)

Chanan Singh Vs. Dayal Singh, 1998 (4) RCR (civil) 558 (P&H)

Gurdev Kaur Vs. Gram Panchayat Balad Kalan and others, 2009 (1) RCR (civil) 550 (P&H)

Coming to the judgment of this Court in **Attar Singh VS. Balwant Singh and others, 2003 (1) RCR (civil) 132**, relied upon by learned counsel for the petitioner, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment, it has not been found to be of any help to the respondent, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

It is also pertinent to note here that as per averments taken by the petitioner in his application dated 1.9.2014 (Annexure P-2) filed before the learned MACT under Order 9 Rule 13 CPC for setting aside the ex parte proceedings dated 12.3.2012 and also ex parte award dated 7.6.2012, petitioner had not even expressed his ignorance about the pendency of the claim petition before the learned MACT. On the other hand, it was specifically mentioned in para 2 of the application that the claim petition was fixed for 12.3.2012, but his counsel as well as respondent No.3-petitioner herein could not appear before the learned MACT, because the petitioner was suffering from illness and doctor advised him to take complete bed rest.

As a matter of fact, it was just a concocted and a made up story

putforth by the petitioner, because neither he pointed out any date, month or year of his illness, nor he referred to any medical treatment, whether taken from government or private hospital. He also did not furnish any medical certificate, so as to show at least prima facie that he was actually suffering from some ailment. Under these circumstances, learned MACT was well justified to pass the impugned order and the same deserves to be upheld. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court as well as different High Courts, including this Court:-

Andhara Bank Vs. M/s Bhanu Engineering Corporation and others, 2005 (10 SCC 593 (SC)

Balwant Singh (dead) Vs. Jagdish Singh and others, 2010 AIR (SC) 3043

State of Punjab Vs. Joginder Pal, 2004 (1) CurLJ 390 (P&H)

Pawan Kumar Vs. Harinder Singh, 2004 (4) RCR (civil) 657 (P&H)

Badri Bhagat Jhandewalan Temple and another Vs. Delhi Development Authority and others 2004 (3) RCR (civil) 357 (Delhi High Court)

A perusal of the judicial record of this Court, including order dated 26.2.2014, whereby two FAOs, bearing FAO No. 5252 of 2012 (Gian Chand Vs. Smt. Kranti and others) and FAO No. 5897 of 2012 (Smt. Kranti and others Vs. Ashok Kumar and others) were disposed of, would show that present petitioner was respondent No.6 in both the abovesaid appeals. It was recorded by this Court vide order dated 8.8.2013 that notice was served upon respondent No.6 but he did not appear either in person or through counsel to contest the appeal.

Thus, it becomes crystal clear that despite having come to know about the impugned ex parte award dated 7.6.2012, when he was duly served in

abovesaid two appeals before this Court in the month of July/August, 2013, he did not take immediate steps seeking setting aside ex parte award dated 7.6.2012. It is so said, because he moved the application under Order 9 Rule 13 CPC as late as on 1.9.2014 and that too, without making even a passing reference about the judgment dated 26.2.2014 passed by this Court, deciding both the abovesaid appeals. Under the peculiar fact situation obtaining on record of the case, inevitable conclusion is that petitioner was trying to play smart not only with the poor claimants but also with the courts, taking the justice delivery system for a ride by glaringly misusing the process of law, with a view to achieve his ulterior motive. In this view of the matter, it is unhesitatingly held that the petitioner was not a bonafide litigant and such a litigant does not deserve any sympathy from any court of law, as well.

During the course of hearing, when confronted with the abovesaid provisions of law contained in Order IX Rule 13 (Explanation) as well as the glaring misconduct of the petitioner, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It is also not in dispute that appeal filed before this Court was not withdrawn but decided on merits vide order dated 26.2.2014. Under these circumstances, it can be safely concluded that the learned MACT committed no error of law, while passing the impugned order and the same deserves to be upheld.

Further, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. Since the impugned order has been found supported with sound reasons, it deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

6.4.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No