

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

CR No.2561 of 2017

Date of decision: 16.05.2017

Sukhwinder Singh

..Petitioner

Versus

Pritam Kaur and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. A.P.S. Sidhu, Advocate for
Mr. Surinder Garg, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 25.01.2017 (Annexure P-1) passed by the Civil Judge (Senior Division), Faridkot, vide which, the application filed by the petitioner for setting aside ex-parte order dated 02.07.2015 and to implead him as necessary party in the main petition, has been dismissed.

Briefly, the facts of the case as made out in the present revision petition are that respondent No.1-Pritam Kaur filed an application for issuance of the Succession Certificate under Section 372 of the Indian Succession Act for collecting certain amount lying in saving schemes of Shiv Kaur wife of Sh. Bhagat Singh, who died on 28.03.2013. Two FDRs were also lying deposited with two Banks. Shiv Kaur was sister-in-law of respondent No.1-Pritam Kaur, who was not having any issue and her husband had already expired. The deceased was residing with Pritam Kaur at Patiala. Said Shiv Kaur executed a Will dated 28.10.2012 in favour of Pritam Kaur and on the basis of said Will, the application was moved for

issuance of Succession Certificate. A publication was also made in local newspaper 'Chardhi Kalan' for the purpose of issuance of notice to general public. Subsequently, when petitioner-Sukhwinder Singh came to know about passing of ex-parte order, he moved an application for setting aside ex-parte order dated 02.07.2015 and to implead him as necessary party in the main petition stating therein that Shiv Kaur-deceased did not execute any Will as nobody was taking care of the deceased during her lifetime. It was also mentioned in the application that the Will alleged to be executed was forged and fabricated and her property is liable to be given to the State.

Reply to the application was filed by raising certain objections of maintainability of the application as well as delay in filing the application. The Civil Judge (Senior Division), Faridkot dismissed the application vide order dated 25.01.2017 on the ground that the application was time barred and the petitioner failed to show any concern with late Smt. Shiv Kaur or respondent No.1-Pritam Kaur. Said order dated 25.01.2017 is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the petitioner knew the deceased-Shiv Kaur personally and the deceased did not execute any Will as no one has taken care of the deceased during her lifetime. Learned counsel further submits that the publication was made in the newspaper, which was not having wide circulation in the area. Learned counsel also submits that the purpose of issuing notice to General Public is that if anybody has any objection, then he can appear and raise objection in this regard. The petitioner did not come to know about filing of said petition as well as the ex-parte proceedings. Learned counsel also submits that the

application filed by the petitioner has wrongly been dismissed only on the ground that the petitioner has no concern with deceased-Shiv Kaur or respondent No.1-Pritam Kaur whereas the deceased was personally known to him. Nothing has been said regarding forging and fabrication of the document.

Heard arguments of learned counsel for the petitioner and have also perused impugned order dated 25.01.2017 as well as other documents available on the file.

The facts of the case are not disputed. The application moved by the petitioner for setting aside ex-parte order dated 02.07.2015 and to implead him as necessary party in the main petition has been dismissed whereas as per stand of the petitioner, notice was issued in the newspaper, which was not having wide circulation in the area and the deceased did not execute any Will as he knew the deceased personally. The Will is stated to be forged and fabricated and the property is liable to be given to the State.

Admittedly, the application was hopelessly time barred and the applicant-petitioner has no locus-standi to file the application as he has failed to show his concern with deceased-Shiv Kaur or respondent No.1-Pritam Kaur in any manner. The petitioner is a stranger to the deceased or respondent No.1. Even he has failed to show as to what prejudice has been caused to him if the ex-parte proceedings are not set-aside.

Learned counsel for the petitioner has not been able to prove from the contents of the application or by the arguments raised before this Court as to what locus-standi the petitioner was having to move an application when neither he was directly related to deceased-Shiv Kaur nor

respondent No.1-Pritam Kaur.

Ex-parte order can be set-aside only when exceptional circumstances are there. This inherent power is with the Court and can be exercised when the party is not at fault or the ex-parte order has been obtained by playing fraud with the Court or by collusion.

In the present case, none of the situation is there to challenge the ex-parte judgment/decreed and nothing has been mentioned in the application as to why the petitioner remained silent for such a long period and did not challenge the ex-parte order. The conduct of the petitioner shows that in spite of having knowledge of the ex-parte order, no action was taken by him. In case, the Will is forged and fabricated document, it is to be seen by the Court and at this stage, nothing can be said. The publication was published in the newspaper but none appeared on behalf of General Public. Thereafter, the order was passed ex-parte. The application for setting aside the ex-parte proceedings was filed by the applicant-petitioner only on 30.09.2016 and it was hopelessly time barred as no justified reason has been mentioned to explain the delay. The petitioner has even failed to show his concern with deceased-Shiv Kumar and respondent No.1-Pritam Kaur.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and as such, the revision petition being devoid of any merit is dismissed.

16.05.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable No