

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 2624 of 2017 (O & M)

Date of decision: 23.05.2017

Major Singh

...Petitioner(s)

Versus

Sudagar Singh

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

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

G.S.SANDHAWALIA, J.

The petitioner is aggrieved against the order dated 09.07.2014 (Annexure P-2) whereby, his application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 03.03.2009 was dismissed. The grievance is also being raised against the appeal meeting the same fate on 10.01.2017 at the hands of the Additional District Judge, Ludhiana (Annexure P-1).

The reasoning given by the Trial Court was that the plea that he was not properly served in the main case was incorrect since a report of refusal had been received back by the Court and the summons had been sent through registered A.D. Thereafter, *munadi* had been effected and ex parte proceedings were initiated on 03.11.2008. The application was also barred by limitation having not filed within 30 days as prescribed under The Limitation Act, 1963, which was alleged to be 03.02.2010. The application had been filed on 06.02.2010 keeping in view the fact that the applicant had protested against the attachment order passed in execution and two

newspaper cuttings had been placed on record dated 14.10.2009 and 13.10.2009 as Exs. R-1 and R-2.

The Appellate Court noticed that apart from himself, the petitioner had not examined any other witness and the respondent, on the other hand, had brought sufficient material on record that the petitioner had knowledge about the passing of the judgment and decree dated 13.03.2009 but he did not file any application till 08.02.2010 which was time barred and, therefore, dismissed the appeal.

A perusal of the paper book would go on to show that the respondent had filed a civil suit on 11.10.2007 for recovery of Rs. 1,21,260/-, which was exclusive of the interest. The petitioner was served through registered A.D., as noticed above, and thereafter was proceeded against ex parte on 03.11.2008 after *munadi* had been effected upon him. The proceedings carried on for over 4 months before the Court concerned whereby, the respondent produced as many as 3 witnesses in his ex parte evidence. Being successful in obtaining a decree, attachment proceedings were initiated against the petitioner who chose to protest against the same which has come on record as Ex. R-1 and R-2 and was reported in the newspaper. Thereafter, he had again chosen not to take recourse to law and did not file the application for setting aside of the ex parte proceedings and the judgment and decree which he only preferred on 08.02.2010.

In the said application, the plea taken was that the land had been got attached by the respondent about 10 days ago and he had never been served personally in the civil suit and that no *munadi* had been effected and neither he had been served by registered A.D. Specifically, it was denied by the respondent that he had no knowledge of the decree and the

application was contested being barred by limitation.

As noticed, apart from himself, the petitioner has not examined anyone and the respondent has successfully brought to the notice of the Courts that the petitioner was well aware of the proceedings in October, 2009 when attachment was being effected. But he still chose not to file any application and, therefore, now cannot turn around and say that the dismissal of the application under Order 9 rule 13 CPC on the ground of limitation is without any basis. The Courts have noticed that initially even in the suit, he was duly served and rightly rejected the argument that the judgment and decree was liable to be set aside. Thus, it is apparent that at repeated occasions, in spite of service, the petitioner has chosen to keep away from the proceedings and, therefore, as such without any sufficient cause having been shown, the Courts were well justified in rejecting his prayer for setting aside the ex parte proceedings.

The orders passed do not suffer from any material infirmity or illegality, which would warrant interference in revisional jurisdiction. Accordingly the present petition is dismissed in limine.

23.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No