

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

CR No.4642 of 2017 (O&M)

Date of decision : 05.12.2017

Birla Sun Life Insurance Company Limited and others

...Petitioners

Versus

Rupesh Kumar Joshi

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pawan Kumar Mutneja, Advocate and
Ms. Nitika Garg, Advocate for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

The petitioners are in revision petition against the order dismissing the application filed under Order 9 Rule 13 CPC for setting aside the ex parte decree. Appeal preferred against the aforesaid order passed by the trial Court was also dismissed.

It is not in dispute that pursuant to the notice given, the petitioner who was defendant No.1 in the suit was served and defendants i.e., defendant No.1 and defendant Nos.2 and 3 who are its officials, appeared through counsel on 13.01.2011. The defendants filed written statement. The counsel kept on appearing on behalf of the defendants upto 01.06.2011.

The defendants were proceeded against ex parte on 28.02.2012.

Thereafter, it appears that an application for amendment of the plaint was

filed. The Court chose to issue fresh notices. Summons were served to defendant Nos.2 and 3 personally whereas notice sent to defendant No.1 through registered post was not received back. The Court drawing the presumption under the General Clauses Act proceeded ex parte against the defendants.

The ex parte decree came to be passed on 06.10.2014. An application was moved for setting aside the ex parte decree on 27.05.2015.

Both the Courts after noticing that the defendants were properly served, dismissed the application.

Learned counsel for the petitioners has very vehemently argued that the defendants-petitioners had engaged through its counsel from Delhi and since that counsel at Ambala did not appear, therefore, ex parte decree should be set aside.

Learned counsel has further submitted that the petitioners gained the knowledge of the decree only on 17.05.2015 when the accounts were sought to be attached.

I have considered the submission. Article 123 of the Schedule attached to the Limitation Act, deals with this area. Article 123 of the Schedule attached to the Limitation Act, provides that limitation is 30 days from the date of the decree or where the summons or notice was not duly served when the applicant had a knowledge of the decree. In the present case, first part of Article 123 would apply because it is undisputed before the Courts that the summons were duly served on the defendants. In fact, the summons were served on the defendants on 2 occasions:-

1. When the suit was filed.

2. When the application for amendment was filed.

The petitioners are in the business of Insurance. If the company like petitioners proceeded against ex parte in the year 2012, slept over the matter for more than three years, this Court does not feel that indulgence can be granted to such company-petitioner.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the orders passed by the Court.

Revision petition is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

05.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No