

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

CR No.5796 of 2011
Date of decision: 14.11.2017

Kirpal Singh

..... Petitioner

Versus

Sukhdev Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aakash Singla, Advocate
for the petitioner.

Mr. Surinder Garg, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in revision petition against the order dismissing the application under Section 5 of the Limitation Act refusing to condone the delay in filing the application for setting aside the ex parte decree.

Defendant-petitioner was proceeded ex parte on 14.05.1999. Ex parte decree came to be passed on 01.06.2000. Defendant-petitioner filed an application for setting aside the ex parte decree on 30.11.2007 i.e. after a period of seven years and five months. Learned trial Court framed a issue and granted permission to the appellant to lead evidence. Learned trial Court has held that the defendant-petitioner was party to the suit titled as 'Surjit Singh Vs. Kirpal Singh'. A copy of the ex parte judgment and decree dated 01.06.2000 was tendered in evidence in the aforesaid suit on 11.12.2006. Therefore, the Courts have held that the defendant-petitioner had come to know about the passing of the judgment and decree at least on

11.12.2006 when judgment and decree was produced on the file of the other suit. The application is filed on 30.11.2007. The Courts below after considering the facts and the evidence led by the parties dismissed the application.

As per Article 123 of the Schedule II attached to the Limitation Act, 1963, the limitation is 30 days from the date of decree or where the summons or notice were not duly served, from the date of knowledge. In the present case, it has come in evidence that the defendant-petitioner gained knowledge of the decree in December, 2006, therefore, the application filed by the defendant-petitioner was barred by time.

There is a concurrent finding of both the Courts below dismissing the application seeking condonation of delay. This Court does not find any error in the findings of the learned Courts below.

Although, learned counsel for the petitioner has very vehemently argued that the defendant-petitioner is victim of the circumstances, however, in view of the facts which are available on the file, this Court is unable to take a different view than what has been correctly taken by the Courts below.

Revision petition is dismissed.

14.11.2017

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No