

**CR No 554 of 2017 (O&M)
and connected matters**

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

**CR No 554 of 2017 (O&M)
Date of Decision: 19.4.2017**

Paramjit Sahota

.....Petitioner

Vs.

Rajat

.....Respondent

ii)

CR No 555 of 2017 (O&M)

Paramjit Sahota

.....Petitioner

Vs.

Harmesh Kumar

.....Respondent

iii)

CR No 565 of 2017 (O&M)

Paramjit Sahota

.....Petitioner

Vs.

Naresh Kumari

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Aditya Dassaur, Advocate for
Mr. C.L. Verma, Advocate
for the petitioner.

Mr. Sarju Puri, Advocate
for the respondents.

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RAMESHWAR SINGH MALIK J. (ORAL)

These three identical revision petitions bearing CR Nos. 554, 555 and 565 of 2017, filed under Article 227 of the Constitution of India, at the hands of respondent No.2-owner of the offending tractor in three identical claim petitions under Section 166 of the Motor Vehicles Act, 1988, are directed against three different but similar orders of even date. i.e. 2.1.2017 passed by the Additional District Judge, (MACT), whereby three similar applications filed by the petitioner, under Order 9 Rule 13 read with Section 151 CPC for setting aside the order dated 22.3.2012, whereby petitioner was proceeded against ex parte, and also ex parte award dated 13.9.2013, were dismissed.

All these three identical revision petitions are being decided together vide this common order, with the consent of learned counsel for the parties, as all the three petitions are arising from same set of facts. However, for the facility of reference, facts are being culled out from CR No. 554 of 2017 (Paramjit Sahota Vs. Rajat).

Heard learned counsel for the parties.

A bare perusal of the impugned orders passed by the learned Additional District Judge would make it crystal clear that petitioner filed application under Order 9 Rule 13 CPC on 21.9.2015, for setting aside the order dated 22.3.2012, i.e. after about 3½ years and also ex parte award dated 13.9.2013, i.e. after two years of its passing. It is also pertinent to note here that petitioner had appeared in execution petition on 20.9.2014, but thereafter, he kept on seeking adjournments and when warrants of attachment came to be issued, he changed his counsel and filed this

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application under Order 9 Rule 13 CPC on 21.9.2015.

Perusal of the application under Order 9 Rule 13 (Annexure P-3) shall make it crystal clear that there was not even a passing reference of the appearance by the petitioner in the execution petition as far back as on 20.9.2014, with a view to give such an impression as if petitioner was not at all aware about the order dated 22.3.2012, whereby he was proceeded against ex parte and ex parte award dated 13.9.2013 as well as execution petition wherein he had already put appearance.

This irresponsible and unwarranted conduct of the petitioner would show that he had been trying to play smart not only with the genuine claimants but also with the courts, so as to achieve his ulterior motive to delay the payment of just amount of compensation to the bonafide claimants. Thus, petitioner has not been found to be a bonafide litigant, because of which, he is not entitled for any sympathy from this Court as well.

Although the petitioner took a plea that he was not having cordial relations with his son Palwinder Singh, who did not inform him about the receipt of summons in the claim petition, yet petitioner has miserably failed to substantiate this plea either before the learned Additional District Judge or before this court, referring to any relevant material in this regard. On the other hand, this plea taken by the petitioner has been found factually incorrect and misleading as well, in view of the statement made by Process Server-Sarup Singh as RW1. He specifically deposed before the court that petitioner, along with his family, was residing in one and the same house, because of which he effected service on the petitioner through his son-Palwinder Singh, being an adult member of the family, who took the

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responsibility to inform his father about the date of hearing before the learned MACT.

This witness-RW1 also duly proved the summons signed by Palwinder Singh as Ex. R2. Further, RW1 was put to lengthy cross examination by learned counsel for the petitioner but nothing adverse could be elicited which may support the contention raised on behalf of the petitioner. Notice (Ex. R1) and report made thereon by the process server as Ex.R2 were duly proved on record.

Interestingly, petitioner in his statement claimed that he was having separate ration card from his son but the same was not produced in court for the reasons best known to him. This would amount to material concealment on the part of the petitioner, as he withheld the relevant document from the notice of this Court, for which adverse inference was liable to be drawn against him. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge was well within his jurisdiction to pass the impugned order and the same deserves to be upheld.

Even if earlier delay from 22.3.2012 up to 20.9.2014 was to be ignored, there was not even an effort made on behalf of the petitioner to explain the delay of exactly one year, i.e. from 20.9.2014 to 21.9.2015. Despite having appeared on 20.9.2014 in the execution proceedings, petitioner applied for certified copy of award as late as on 25.8.2015, which shows malafide intention on his part, to cause maximum delay. He did not furnish any kind of explanation for this delay of one year. In view of the abovesaid undisputed position on record, petitioner cannot be permitted to

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draw any benefit out of his own wrong and negligent conduct.

So far as judgment this Court in **M/s Jain Sons Automobiles Ltd. Vs. Sunil Kumar Sharma and others, 2007 (1) ICC 103**, attached with the revision petitions as Annexre P-9, is concerned, 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 petitioner, 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 was least expected from the petitioner that immediately after putting appearance on 20.9.2014 before the executing court, he would have wasted no time in filing the application under Order 9 Rule 13 CPC. However, he kept on sleeping like Kumbakarna and got up from his slumber after one year and then filed application under Order 9 Rule 13 CPC on 21.9.2015, as if he was not governed by any law of limitation. Then he took false plea before the court contending that he immediately applied for certified copy of ex parte award after coming to know about it. This plea was not only false but was also misleading, because he had already put appearance on 20.9.2014.

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Such a litigant who does not have any respect for the truth and the law is also not entitled to the discretionary relief at the hands of any court of law. In this view of the matter, it can be safely concluded that the malafide intention and negligent conduct of the petitioner has rendered him completely disentitled for any kind of relief at the hands of this Court, as well.

The view that has been taken by this court also finds support from the following judgments of the Hon'ble Supreme Court as well as 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 Jhandwalan Temple and another Vs. Delhi Development Authority and others 2004 (3) RCR (civil) 357 (Delhi High Court)

Before arriving at its just conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well evidence available on record in correct perspective. Relevant findings recorded by the learned court below in para 8 to 10 of its impugned order, which deserve to be noticed here, read as under:-

“In the instant case, dispute is regarding the service of applicant Paramjit Sahota and the perusal of judicial file shows that notice (Ex.R1) of the claim

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petition was sent to him by process of the court on 03.03.2012 and copy of the summons was received by his son Palwinder Singh on 19.03.2012 (Ex.R2). The non-applicant has examined the Process Server, Sarup Singh as RW-1 who has deposed that on 19.03.2012 he went to the house of Paramjit Sahota for effecting the service of summons which was entrusted to him on the orders passed by Ld.MACT and on that day all the family members of Paramjit Sahota were present in his house. He further deposed that on enquiry from the inhabitants of village Hakimpur, he came to know that Paramjit Sahota alongwith his family was residing in one house and therefore, he gave a copy of summons to Palwinder Singh on taking responsibility that he would inform his father about the date of hearing of the case. He deposed that Palwinder Singh also signed on the back side of summons as it is evident from Ex.R2. RW-1 was cross-examined at length by Ld.counsel for the applicant but the veracity of his testimony could not be shaken.

It is pertinent to note that the applicant has not disputed the signatures of his son Palwinder Singh on the back side of summons but he has set up a case that he was having strained relations with his son who was living in a separate house. Paramjit Sahota in his cross-examination as AW-1 has stated that his ration card was

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separate from that of his son, but he has not placed on record copy of his ration card and therefore, he has concealed material document from the court which could prove that his son was residing in a separate house. Paramjit Sahota has not let any evidence to prove his strained relations with his son Palwinder Singh, at the time when copy of summons was received by his son.

It is worthwhile to note that Paramjit Sahota had appeared in the execution petition filed by the decree holder, through his counsel Sh.K.K. Thukral and when the warrants of attached was issued, he changed his counsel on 30.07.2015 and instead engaged Sh. V.K. Chhabra advocate who sought time to file objections therein. On 21.09.2015 he filed the instant application for setting aside the ex-parte award dated 13.09.2013 by taking a specific plea that when he came to know that the passing of award, he immediately applied for the certified copy of award and filed the instant application. However, perusal of certified copy of the award Ex.A4 shows that the copy was applied for 25.08.2015, whereas the applicant was fully aware of the passing of award because he had appeared in the execution petition on 20.09.2015. The applicant has not given any satisfactory reply for filing this application much beyond the period of limitation prescribed under the law.”

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During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the abovesaid findings recorded in the impugned order passed by the learned Additional District Judge, warranting interference at the hands of this court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned orders passed by the learned court below have been found factually correct, legally justified and also in consonance with the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove and the impugned order deserves to be upheld, for this reason as well.

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 all these three revision petitions are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, these three revision petitions stand dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

19.4.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No