

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

Civil Revision No.6473 of 2017

Date of Decision: 22.09.2017

Balraj Singh Dhillon

... Petitioner

Versus

Satnam Singh & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. S.S. Grewal, Advocate,
for the petitioner.

MAHABIR SINGH SINDHU, J.(Oral)

The present revision petition has been filed against the impugned order dated 6.7.2017 (Annexure P-6) passed by the learned Civil Judge (Junior Division), Ludhiana, vide which two applications filed by defendants No.1 and 4 (respondents No.1 and 3 herein) i.e. one, under Order IX Rule 7 of Code of Civil Procedure (C.P.C.) and second under Order VI Rule 17 of C.P.C. for amendment of that application under Order IX Rule 7 of C.P.C., have been allowed, subject to payment of Rs.2,000/- as costs by each of the defendants No.1 and 4 (respondents No.1 and 3 herein), to be paid to the plaintiff. It is clarified at the outset that the application for amendment under Order VI Rule 17 of C.P.C. was for correction of date i.e. 23.09.2015 instead 21.12.2016 in paragraph 1 of the application filed under Order IX Rule 7 of C.P.C.

It is argued by learned counsel for the petitioner that the application for setting aside the ex-parte orders was moved at the belated stage i.e. after the expiry of period of more than one year and four months and that too without any reasonable explanation. It is further argued that respondents No.1 and 4 (respondents No.1 and 3 herein) were well aware of the Court proceedings and they were watching each and every date of hearing

from outside the Court; but just to prolong the litigation they did not join the proceedings deliberately and intentionally. It is further argued that even in para 1 of the application filed Order IX Rule 7 of C.P.C., the next date of hearing of pendency of the suit was mentioned as 23.09.2015, but despite that the application for setting aside the ex parte orders was filed only on 21.12.2016 and as such, the learned trial Court has passed the impugned order in a very casual manner without due application of mind.

Heard learned counsel for the petitioner and perused the paper book along with the impugned order.

A bare reading of the application filed under Order IX Rule 7 of C.P.C reveals that as per the averments made in paragraph 2 thereof, defendant No.1 is living in Canada and he has appointed defendant No.4(respondent No.3 herein) as his GPA and his name is Malwinder Singh son of Sh. Mukhtiar Singh, resident of Village Haibowal Kalan, Tehsil and District Ludhiana; but the plaintiff-petitioner deliberately furnished his wrong name as “Manwinder Singh”, resident of Village “Labowal Kalan” with the sole motive to obtain ex parte decree against defendants No.1 and 4 (respondents No.1 and 3 herein). It is further mentioned in paragraph 3 of the application that no service upon defendants No.1 and 4 has been effected by any mode of service in this case even no process was presented to the defendants No.1 and 4 by any processing agency; nor they have refused to accept the process which might have been issued by the Court and the report,if any, on record is false and procured one. It is further submitted in para No.3 that yesterday only defendants No.1 and 4 (respondents No.1 and 3 herein) gained the knowledge about the pendency of the suit and immediately the application is filed.

In reply filed by the present petitioner, there is no specific denial to the assertions made in paragraphs 2 and 3 of the application and to appreciate

the arguments of learned counsel for the petitioner it is necessary to reproduce paras No.2 and 3 of the application as well as reply thereto, which read as under:-

Para 2 of the application	Reply to para 2 of the application filed by the petitioner
That the applicant/defendant No.1 is living in Canada. He has appointed Sh. Malwinder Singh son of Shri Mukhtiar Singh, resident of Haibowal Kalan, Tehsil and District Ludhiana as his attorney. The plaintiff has purposely furnished wrong name as Manwinder Singh instead of Malwinder Singh and name of Mohalla as Labowal Kalan instead of Haibowal Kalan with a motive to obtain ex parte decree, against the defendants No.1 and 4. The defendant No.4 being attorney of the defendant No.1 has complete knowledge about the facts of the case and he is competent to depose about the same in the Court. Photocopy of the General Power of Attorney executed by defendant No.1 in favour of defendant No.4 is attached herewith for kind perusal of this Hon'ble Court.	That para no.2 of the application is wrong and denied. The applicants/ defendants no.1 and 4 were aware the pendency of the present suit and they intentionally remain absented from it in order to linger on the matter. Detail reply has already given in preliminary objections, which may kindly be read as part of reply to this para and not repeated here for the sake of brevity.
Para 3 of the application	Reply to para 3 of the application filed by the petitioner
That no service has been effected on the applicants/defendants No.1 and 4 by any mode of service in this case till date. No process was presented to the applicants/defendants no.1 and 4 by any Processing Agency or Postman for service of the applicants/defendants no.1 and 4 nor the applicants/defendants no.1 and 4 refused to accept the process which might have been issued by the Court. The report, if any, on record is false and procured one. Yesterday, the applicants/defendants no.1 and 4 gained knowledge about the pendency of the suit. Hence this application is being moved without causing any delay. Prior to it the applicants/defendants no.1 and 4 had no knowledge about the pendency of the suit.	That para no.3 of the application is wrong and denied. The applicants/defendants no.1 and 4 were duly served as per law, but they have intentionally avoid the process of service and not appeared before this Hon'ble Court in order to linger on the matter. Detail reply has already given in preliminary objections, which may kindly be read as part of reply to this para and not repeated here for the sake of brevity.

Even in the preliminary objections of the reply filed by the plaintiff-petitioner also, there is no dispute that name of respondent No.4 was not wrongly mentioned by the petitioner and to make the things more clear the address of respondent No.4 as shown in the memo of parties of the civil suit is as under:-

“Manwinder Singh son of Mukhtiar Singh
resident of Village Labowal Kalan, Tehsil and
District Ludhiana.”

In view of the above, it is apparently clear that name of defendant No.4 (respondent No.3 herein) as well as village's name in the civil suit were not correctly mentioned for the reasons best known to the petitioner and that was most crucial as defendant No.4 (respondent No.3 herein) was the General Power Attorney holder of defendant No.1 and thus, the learned trial Court has committed no wrong while allowing the application and setting aside the ex parte orders dated 11.11.2014 and 25.08.2015. The law is well settled that no one should be condemned unheard and moreover, in this case the petitioner has been compensated by way of costs of Rs.2,000/-, to be paid by each of the defendants No.1 and 4 (respondents No.1 and 3) to the present petitioner. There is no averment in the present petition that costs have not been paid to the petitioner in pursuance to the impugned order dated 6.7.2017. Still further the impugned order clearly reveals that amended application for setting aside the ex parte orders has already been placed on record; but the petitioner has deliberately not attached the same with the petition and even he has not cared to annex the ex parte orders dated 11.11.2014 and 25.08.2015 to substantiate as to how and in what manner the defendants No.1 and 4 were served and proceeded ex parte. Even otherwise, the petitioner is not going to suffer any prejudice on account of the setting

aside of the ex parte orders dated 11.11.2014 and 25.08.2015 as he will get proper chances to pursue his case on every stage(s). Thus, it seems that the present petition has been filed as a luxury and as such, the same is liable to be dismissed.

Petition dismissed.

22.09.2017
monika

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No