

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

C.R. No. 678 of 2017

Date of Decision:- 01.02.2017

Sandeep

....Petitioner

vs.

Kuldeep Singh

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rajesh Hooda, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 15.09.2016 (Annexure P-8) passed by the Civil Judge (Junior Division), Bahadurgarh (Jhajjar) whereby the Executing Court has dismissed the objections filed by the petitioner.

Briefly the facts of the case are that the plaintiff-respondent filed a suit for rendition of accounts mentioning therein that defendant/petitioner was dealing in the trade of wine and was the licensee for the year 2008-09. Defendant-petitioner was allotted a shop for sale of country made wine. The plaintiff-respondent being familiar to defendant-petitioner was persuaded for investment in the liquor business. Plaintiff-respondent paid a sum of ₹ 3,00,000/- to the defendant-petitioner on

different dates with a promise to return the amount with interest @ 24% per annum with share of profit earned in the business. The defendant-petitioner after paying ₹ 1,00,000/- in five instalments refused to accede the demand of plaintiff-respondent. Hence the suit was filed for rendition of accounts. After issuance of notice, defendant-petitioner appeared and filed written statement denying all the averments made by the plaintiff-respondent. Counsel for the petitioner-defendant did not appear thereafter before the trial Court and as such the petitioner-defendant was proceeded ex parte. The trial Court passed ex parte judgment and decree on 20.11.2012. The suit filed by plaintiff-respondent was allowed and defendant-petitioner was directed to settle the accounts with plaintiff-respondent and to pay the amount, if any become due after settlement.

Execution was filed and objections filed by petitioner were dismissed which have been challenged in the present revision petition.

Learned counsel for the petitioner submits that the petitioner came to know about the ex parte judgment and decree dated 20.11.2012 only after receiving the summons in the execution petition filed by the respondent in the month of September, 2013. Thereafter, he filed an application under Order 9 Rule 13 read with Section 151 CPC on 16.11.2013 for setting aside ex parte judgment and decree dated 20.11.2012. The application filed by the petitioner was also dismissed vide order dated 21.7.2014. Thereafter, the respondent filed petition for execution of judgment and decree dated 20.11.2012. Petitioner filed objections to the execution petition, which were dismissed without any consideration vide order dated 15.9.2016. The respondent did not lead any evidence to show

that petitioner was ever allotted any licence for sale of liquor or was ever in the business of sale of liquor. No material was placed on record to show as to whether there was any partnership firm or not. The petitioner was never allotted any licence and, therefore, the question of rendition of accounts did not arise at all. Learned counsel also submits that the Executing Court has failed to appreciate the judgment and decree passed by the trial Court which was not executable in the absence of any accounts being maintained by the petitioner.

Heard arguments of learned counsel for the petitioner and have perused the impugned order dated 15.9.2016 (Annexure P-8) and other documents available on the file.

The impugned order has been challenged on the ground that objections filed by the petitioner have wrongly been dismissed and the judgment and decree passed by the trial Court was not binding upon the petitioner as the same was passed at his back without affording him any opportunity of hearing. Admittedly, an application under Order 9 Rule 13 CPC was filed by the petitioner to challenge the ex parte judgment and decree, which was dismissed vide order dated 21.7.2014. Thereafter, the order was never challenged. The judgment dated 20.11.2012 was passed ex parte against the petitioner but thereafter he has availed no remedy available to him. Petitioner has filed objections to the execution before the Executing Court which have been rejected. It has not been argued by learned counsel for the petitioner as to how the objections are maintainable when judgment and decree was passed ex parte. Petitioner did not challenge the order passed in the application for setting aside the ex

parte judgment and decree. Subsequently, after a long delay, the objections were filed which have been rejected being not maintainable.

Since the order passed on the application for setting aside the ex parte decree has not been challenged, the judgment and decree passed by the trial Court has attained finality. The case was also adjourned by the trial Court on the date of passing of order dated 15.9.2016 for presence of the parties for exploring the possibility of amicable settlement between them and the objections filed by the petitioner were summarily dismissed being not maintainable.

Accordingly, I find no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

February 01, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes