

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

**CR No. 7419 of 2013 (O&M)
Date of Decision: December 14, 2017**

Atul Lalwani

...Petitioner

Versus

Dilip Sukhadia and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. B.S. Bedi, Advocate
for the petitioner.

Mr. Lokesh Sinhal, Advocate
for respondent no.1.

ANITA CHAUDHRY, J.

Petitioner is aggrieved by the dismissal of his application for setting aside the ex parte order dated 6.9.2010.

The petitioner had filed the application for setting aside the ex parte order on 29.08.2012. He claimed that he could not contest the case on account of sudden death of his father and he too met with an accident and had to undergo prolonged treatment and upon recovery he approached the Court and sought opportunity to defend the case. He also blamed his counsel of negligence and pleaded that he could not be punished for negligence of his counsel.

The trial Court sought reply from the other side and dismissed the application on 6.11.2013. The trial Court made the

following observations in para 6, which read as under:-

“There is a clear lack of diligence on his part to come present before court, applicant is alleging that he was unwell, however, he could have sent his counsel to appear on his behalf as he had full knowledge of pendency of proceedings. The applicant is alleging that date of knowledge is 18.8.2012, however it is difficult to imagine that defendant no.1 after 6.9.2010 had no knowledge regarding the proceedings happening in the present case. The filing of this application is without reasonable justification as to why defendant no.1 remained absent on 6.9.2010, as the date of sudden demise of his father is 17.5.2011 much beyond the date when he was proceeded ex parte and when pendency of this case was in his active knowledge.”

I have heard counsel of both the sides.

The petitioner was asked to place on record all the zimni orders but he filed only selective zimni orders and concealed some facts, which would be noticed in the later part of the order. The record was also summoned as there was some contradiction in what petitioner was claiming. Photocopies of the relevant dates have been made a part of the record.

The counsel for the petitioner had submitted that the suit had been filed by the father-in-law of the petitioner and his (petitioner) relation with his wife were not good and the summons were intentionally sent at the Gurgaon address whereas he was a resident of Bhopal and the photocopy of the A.D. Card would show that service was sought to be effected at Gurgaon and the A.D. Card does not bear his signatures and he was proceeded ex parte. It was urged that the petitioner came to know of the pendency of the petition when he received summons from the High Court as the stay application filed by the plaintiff had been dismissed and they had approached the High Court in a revision and it was in August 2012 that he came to know of the case. The counsel further submitted that the father of the petitioner had died and his mother also died later on. The counsel had also referred to the Order 9 Rule 6 of CPC and to the High Court Rules & Orders, specifically to Chapter 1(k) Rule 4 and it was urged that when the Court was closed on a date fixed for hearing then the ex parte proceedings could not have been taken out against him and petitioner be permitted to join the proceedings and file the written statement. Reliance was placed upon *Ram Pal and others Vs. Jagrup Singh and others 1987 PLJ 355*, *Kuldip Kaur Vs. Gurdeep Singh 1993(3) RRR 696* and *Tara Chand and another Vs. Kabul Chand and others 1964(2) ILR (Punjab) 880*.

The submission on behalf of the respondent is that the petitioner has not disclosed the date of death of his father or mother. It

was urged that the petitioner has concealed facts and it is for the second time that he was proceeded ex parte and he did not disclose the correct facts nor has filed the zimni orders of the date on which he was proceeded ex parte. It was urged that a wrong plea has been taken that he came to know about the pendency on the date when he received summons from the High Court and this plea has not been taken in the application and therefore, there is no discussion in the order of the lower Court and new pleas are being taken. It was urged that the petitioner had been proceeded ex parte for second time on 6.9.2010 and the application had been filed on 29.8.2012 and he was watching the proceedings. It was urged that the father of the petitioner died somewhere in May 2011.

The petitioner had intentionally not filed the zimni order dated 6.9.2010 vide which he was proceeded ex parte as it would have exposed that he had entered appearance prior to September 2010 and the argument that the summon in 2009 was sent to Gurgaon address are totally fallacious. The petitioner did plead in para 2 of his petition that he had engaged a counsel who failed to appear on 6.9.2010. The petitioner had initiated the submissions on a wrong premise that notice was wrongly sent at the Gurgaon address. The first notice was sent in the year 2009. The defendant engaged a counsel and had appeared on his own in 2010. This plea was not taken in the application and completely different case is being projected here. The petitioner failed to mention the date of death of his parents as it would have exposed the falsehood.

The proceeding sheet shows that after the petitioner got a stay here and he had been seeking adjournments. It is only when last opportunity was granted and stay was extended for the limited period that the petitioner had come forward to argue the matter.

There is no infirmity in the order passed by the Court below. Revision is dismissed with cost of Rs.10,000/- to be deposited with District Legal Service Authority, Gurgaon and would be deposited before the trial Court within a fortnight, failing which Court would initiate proceedings to recover it.

(ANITA CHAUDHRY)
JUDGE

December 14, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No