

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8115 of 2016
Date of Decision:- 06.07.2017

Raj Kumar

.....Petitioner

Versus

Raj Kumari and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Tyagi, Advocate, for the petitioner.

RITU BAHRI, J. (Oral)

Present revision petition under Article 227 of the Constitution of India for setting aside the judgment and decree dated 18.11.2015, passed by learned Additional Sessions Judge, Gurgaon (Annexure P-1), order dated 10.11.2014, passed by learned Civil Judge (Jr. Division), Gurgaon (Annexure P-2) and judgment and decree dated 08.03.2013 (Annexure P-5), passed by learned Civil Judge (Jr. Division), Gurgaon, vide which the suit of the plaintiffs/respondents has been decreed to the extent that Will dated 23.07.1998 is declared as illegal, null and void.

Relevant facts of the case are that petitioner-Raj Kumar and others had filed an application under Order 9 rule 13 CPC read with Section 151 CPC (Annexure P-4) for setting aside the ex-parte orders

dated 12.8.2008 and 21.4.2009 and ex-parte judgment and decree dated 8.3.2013 with the brief allegations that the plaintiffs had filed a suit on 12.02.2005 for declaring a Will executed by Ram Phal as null and void and further an application for permanent injunction restraining the defendants not to sell the suit property. In the suit, application filed under Order 39 Rule 1 and 2 CPC was dismissed and thereafter on 5.12.2005, an application under Order VI rule 17 CPC was filed, in which, after sending notices to defendant Nos.1 and 2, they were proceeded against ex-parte on 07.09.2005. On 12.08.2008, defendant No.3 was proceeded against ex-parte. On 21.4.2009, defendant No.4 was also proceeded against ex-parte. The suit of the plaintiffs was finally decreed, vide judgment dated 08.03.2013 (Annexure P-5) to the extent that Will dated 23.07.1998 was declared as illegal, null and void and Ram Phal was no legal right to bequeath the suit property. The plaintiffs could not lead any evidence to the effect that Ram Phal was in continuous, peaceful, uninterrupted and hostile possession of the suit property for a period more than 12 years to the knowledge of the owners thereof. The prayer of the plaintiffs for permanent injunction was dismissed. The trial Court vide order dated 10.11.2014 (Annexure P-2) has dismissed the application under Order 9 Rule 13 for setting aside the ex-parte decree on the ground that the parties were appearing before the Court through their counsel after the service of summons. They failed to show any sufficient cause for not appearing before the Court when the suit was called on for hearing. On appeal, this order has been affirmed by the Court of Additional District Judge, Gurgaon, vide order dated 18.11.2015

(Annexure P-1) by passing the detailed order. The paragraph No.8 of the said judgment is as under: -

“A perusal of the civil court file shows that the exparte judgment and decree was passed in favour of the plaintiffs, whereby the suit was decreed to the extent of setting aside the will of Ramphal, the father of the parties to the suit. It is evident that the suit was filed on 12.2.15 and summons were issued upon the defendants who were four in number. The defendants No.2 to 4 who were applicants before learned trial court, which passed the impugned order, appeared before the civil court, which passed the main decree in the initial stage of proceedings. Record shows that the appellant Raj Kumar , who was applicant No.3, duly appeared before lower court in person on 9.3.05 alongwith his counsel Shri S.S.Raghav Advocate ,whereas defendants No.1 and 2 Ms.Grace the widow of the deceased testator Ramphal and Babu Lal son , were also represented by their counsel Sh.Rajpal Singh Advocate whereas defendant No.4 Dominic also appeared through counsel Sh.Dharamvir Singh Advocate. Thus it is clear that on the very second day of suit ,service of all the four defendants was complete. After 9.3.15 from time to time the case was being adjourned. However defendants NO.3 and 4 filed written statement. However defendants No.1 and 2 had also filed written statement on 9.3.05 on the first date when they put in appearance through their counsel Sh.Raj Pal Singh Advocate. Thus it is clear that appellant filed written statement alongwith his brother Dominic on 15.6.05 and thereafter after hearing the arguments on the application for temporary injunction on 7.9.05, stay application was dismissed and thereafter on 5.12.05, when the case was fixed for framing of issues and for admission and denial, on that day defendant No.1 and 2 absented and as none on their behalf could appear and resultantly they were proceeded against exparte. However thereafter on 17.3.06, appellant also absented during court proceedings, as neither he nor his counsel could put in appearance despite the fact that the case was called several times by learned trial court in the main suit and thus he too was proceeded against exparte at 3.20 p.m . It is worthwhile to mention here that on 9.4.07 appellant through his counsel Sh.S.S.Raghav , Advocate moved an application for setting aside exparte proceedings initiated against him and learned civil court in main suit adjourned the suit to 24.8.07 for filing reply and hearing was adjourned for three dates on 24.8.07,7.11.07 and 28.2.08 but no effective hearing could be granted, as party sought adjournment and ultimately the case was adjourned to 12.8.08 for raising arguments on the

application for setting aside exparte order but on that date, appellant again absented from the court and his counsel also did not put in appearance and resultantly his application for setting aside exparte order dated 28.9.06 was also dismissed in default.”

The appellate Court, after referring the judgments passed in Karvy Consultant Ltd. Vs. Umesh Jain, 2013(1) RCR Civil 482; Paramjit Singh Vs. Faquir Singh, 2000(1) PLR 375; M/s N.K. Electronics Vs. Narinder Kumar, 2013(4) RCR (Civil) 143 and judgment of Supreme Court in Parimal Vs. Veena alias Bharti, 2011(2) RCR Civil 155, has observed that the party must not act in negligent manner or there must not be lack of bonafide on its part and the party must have acted diligently or must not remain inactive. Thus sufficient cause is a vide term, which presupposes the existence of bonafide and honest nature of claim made by appellant vouching for sufficient cause for his absence from the court. Hon'ble Supreme Court further held that every good cause is a sufficient cause and a party must suffer an explanation for non appearance. Still further Hon'ble Supreme Court in para 23 of its judgment has held that in appeal against exparte decree under Order 9 rule 13 CPC ,it is obligatory on the part of the appellate court not to interfere with exparte decree unless it meets the statutory requirement.

In the present csae the petitioner-defendant after being duly served and filing written statement, has awoken from a deep slumber after 7 years of his having been proceeded against exparte and thus he cannot take the benefit of said period as sufficient cause for setting aside the exparte decree. This aspect has already been considered by the Hon'ble

Supreme Court in Maya Devi Vs. Lalita Prasad, 2014(2) RCR (Civil) 193.

After hearing the learned counsel for the petitioner, after going through the record and the ratio of law laid down by the Hon'ble Supreme in the above-said judgment, this Court is of the considered view that after being served and filing written statement there was no sufficient explanation as to why petitioner-defendant Raj Kumar did not file any application to set aside the ex-parte decree. There is absolutly no grounds calling for interference of this Court by exercising revisional jurisdiction to set aside the impugned orders. Consequently, the instant revision petition stands dismissed.

July 06, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No