

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

CR No.8227 of 2014 (O&M)
Date of decision : 12.10.2017

Sahab Ram

...Petitioner

Versus

Ram Pyari (since deceased) through legal heirs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Gupta, Advocate for the petitioner.

Mr. Hitesh Verma, Advocate
for respondent No.1(a to d) and 2.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff is in revision petition against the order dated 05.11.2014 passed by Additional Civil Judge (Senior Division), Fatehabad, allowing the application filed under Order 9 Rule 13 CPC for setting aside the ex parte decree dated 11.12.2009.

The plaintiff had filed a suit for declaration against his mother, nephew and other legal heirs of Mani Ram, his father. In the civil suit, summons were sent for service to defendant No.1-Ram Pyari for 20.08.2007. As per the report of the Process Server, the summons could not be served personally on her and copy thereof was handed over to grandson-Satpal. Hence, there was no personal service of summons in the suit on late Smt. Ram Pyari. Sh. Ram Pyari filed an application for setting aside the ex

parte decree under Order 9 Rule 13 CPC on 28.03.2011. It was pleaded by her that she had not engaged any Advocate and her grandson had taken her thumb impressions on Vakalatnama and some blank papers.

Learned trial Court after appreciating the evidence available on the file has chosen to set aside the ex parte decree and has give opportunity to Late Smt. Ram Pyari, who unfortunately died, to contest the suit.

The plaintiff had filed a suit for declaration claiming inheritance on the basis of a Will. The dispute was with regard to the immoveable properties owned by Mani Ram, father of the plaintiff and husband of Ram Pyari. When the Court examined the evidence of two Advocates namely Sh. Bansi Lal and Sh. Hawa Singh who appeared as RW1 and RW3, it was proved that Ram Pyari had not engaged any of them. Sh. Bansi Lal had stated that the parties were known to Hawa Singh and, therefore, he had obtained the signatures of the defendants whereas Hawa Singh when appeared in the witness-box had stated that it is Bansi Lal who must have obtained the thumb impressions of Ram Pyari. Taking into consideration this fact, the trial Court has exercised its discretion and set aside the ex parte decree.

Learned counsel for the petitioner has very vehemently argued that the limitation for filing the application for setting aside the ex parte decree would start from the date of service of summons and, therefore, the application was clearly barred by time.

A careful reading of Article 123 of the Schedule attached to the Limitation Act, 1963, proves that it is in two parts. First part provides that the limitation would start from the date of decree whereas second part

provides that limitation would start from the date of knowledge of the applicant if the summons or the notice were not duly served upon the party. In this case, there was no personal service on Ram Pyari. Therefore, the second part would be applicable. It was specifically pleaded in the application under Order 9 Rule 13 CPC filed by Ram Pyari, who subsequently died, that she gained the knowledge of the ex parte decree in February, 2011 when she was served with summons in another suit.

Learned counsel for the petitioner has further argued that Smt. Ram Pyari had appeared in Lok Adalat in a suit filed by Satpal and in that case also, Bansi Lal was the counsel.

I have examined that aspect also. Bansi Lal was counsel representing Satpal and not late Smt. Ram Pyari.

In the present case, learned trial Court has exercised the discretion in setting aside the ex parte decree. Such discretion is not proved to have been exercised arbitrarily.

In view thereof, I do not find any good ground to interfere with the order passed by the trial Court.

Revision petition is dismissed.

All the miscellaneous applications are disposed of, in view of the abovesaid judgment.

12.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No