

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.969 of 2015
Date of decision: 11.01.2017

Iqbal Singh

... Petitioner

Vs.

Jagmal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Arvind Singh, Advocate
for the petitioner.

Mr. Aayush Gupta, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 07.11.2013 (Annexure P-3) passed by learned Additional District Judge, Kurukshetra dismissing the civil miscellaneous appeal of the petitioner, upholding the impugned order dated 12.02.2013 (Annexure P-2) passed by learned Civil Judge (Sr. Divn), Kurukshetra, thereby dismissing the application of the petitioner moved under Order 9 Rule 13 of the Code of Civil Procedure (for short 'CPC'), seeking setting aside the ex-parte order dated 11.08.2003 as well as the ex-parte judgment and decree dated 23.02.2005, petitioner-defendant has approached this Court by way of instant revision petition under Article 227 of the Constitution of India, for setting aside the impugned orders.

Notice of motion was issued.

Facts are hardly in dispute. Respondents-plaintiffs filed a suit for declaration with consequential relief of permanent injunction. In fact, main plank of the plaintiffs-respondents was that they have become owners in possession of the suit land by way of adverse possession. On the basis of said averment taken by the plaintiffs-respondents in their pleadings, learned trial Court framed issue No.1 to the effect, whether the plaintiffs are owners in possession of the suit land by way of adverse possession. However, when the case was listed for evidence of the plaintiffs, defendant did not appear and was proceeded against ex-parte vide order dated 11.08.2003. Suit of the plaintiffs was decreed vide ex-parte judgment and decree dated 23.02.2005 (Annexure P-1).

Defendant-petitioner was a retiree and after his retirement, he started living at Ambala Cantt, whereas the suit filed by the plaintiffs-respondents was going on before the learned trial Court at Kurukshetra. He was not keeping good health. When the defendant-petitioner went to his village namely Sharifgarh, Tehsil Sahabad, District Kurukshetra on 06.12.2007, plaintiff No.1 started claiming that he has become owner of the land in question. Defendant-petitioner went to the Court on the very next day and enquired about the matter, upon which he came to know that an ex-parte decree dated 23.02.2005 has been passed by the learned trial Court in favour of the plaintiffs-respondents.

Defendant engaged his counsel on that very day i.e. 07.12.2007 and applied for certified copy of the impugned judgment and decree dated 23.02.2005. Thereafter, application under Order 9 Rule 13 CPC was filed without any delay, seeking setting aside of the ex-parte order dated 11.08.2003 as well as the ex-parte judgment and decree dated 23.02.2005. Notice of this application was issued to the plaintiffs. Reply was filed by the non-applicants/plaintiffs. Appropriate issues

were framed by the learned trial Court. Parties led their respective evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court dismissed the application of the petitioner vide impugned order dated 12.02.2013 (Annexure P-2). Dissatisfied, defendant-petitioner filed his civil miscellaneous appeal, which also came to be dismissed by the learned First Appellate Court vide impugned order dated 07.11.2013 (Annexure P-3). Hence this revision petition.

Along with the revision petition, petitioner filed two miscellaneous applications as well. CM No.322-CII of 2015 was for seeking exemption from filing certified copy of Annexure P-1, whereas CM No.3220-CII of 2015 was for seeking condonation of delay of 376 days in refiling the revision petition. Both these applications have been allowed vide separate order passed today.

Learned counsel for the petitioner, while placing reliance on a judgment of the Hon'ble Supreme Court in **Bhanu Kumar Jain Vs. Archana Kumar and another, 2005 (1) SCC 787** and the judgment of this Court in **Smt. Sharda Arora Vs. Jasbir Singh and others, 2014 (4) RCR (Civil) 707**, submits that the learned Courts below have proceeded on a patently illegal approach, while passing their respective impugned orders. He further submits that petitioner was not going to gain anything by his non-appearance in the Court, when the suit for declaration filed by the plaintiffs, claiming ownership of the suit land by way of adverse possession, was not even maintainable. He also submits that the moment petitioner came to know about the ex-parte order dated 11.08.2003 as well as the ex-parte decree dated 23.02.2005, he immediately filed the application for seeking setting aside the ex-parte orders, judgment and decree without any further loss of time. Concluding his arguments, learned counsel for the petitioner prayed for

setting aside the impugned orders, by allowing the present revision petition.

Per contra, learned counsel for the respondents-plaintiffs, while placing reliance on a judgment of Delhi High Court in **Badri Bhagat Jhandewalan Temple and another Vs. Delhi Development Authority and others, 2004 (3) RCR (Civil) 357**, submits that defendant-petitioner was under legal obligation to explain each and every day's delay. He further submits that since the petitioner failed to give reasonable explanation for the delay of more than two years, the learned Courts below were well justified in passing the impugned orders, which deserve to be upheld. He prays for dismissal of the present revision petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case noticed hereinabove, instant revision petition deserves to be accepted. To say so, reasons are more than one, which are being recorded hereinafter.

Since the defendant-petitioner was owner of the suit land, he was not going to gain anything, while not contesting the suit by his non-appearance. He was a retiree. After his retirement, as pleaded and argued on behalf of the petitioner, he was settled at Ambala. Litigation was going on at Kurukshetra. He was not keeping good health for quite some time. He had engaged the counsel namely Sh. M.R. Gulati, Advocate to defend him in the suit filed by the plaintiffs-respondents. He never received any intimation from the learned counsel, for his appearance.

With a view to prove the averments taken by him in his application

under Order 9 Rule 13 CPC, petitioner appeared before the learned trial Court as AW1 and also tendered in his evidence, documents Ex.A1 to Ex.A5. Only that is what could have been done by the petitioner-defendant. However, the learned Courts below proceeded on a wholly misconceived approach, while passing their respective impugned orders. True factual position as well as the settled principles of law applicable in the present case, were not appreciated by the learned Courts below, in the correct perspective. Having said that, this Court feels no hesitation to conclude that the impugned orders cannot be sustained.

The contentions raised by learned counsel for the respondents-plaintiffs have been duly considered but not found worth acceptance, as the same are wholly misplaced. Judgment relied upon by learned counsel for the respondents has not been found applicable to the facts of the present case. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its earlier view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge’s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment

must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret

words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

So far as the facts of the case in hand are concerned, as noticed hereinabove, the fact situation is entirely different than the abovesaid judgment of the Delhi High Court, relied upon by learned counsel for the respondents. Learned Courts below passed the impugned orders proceedings on the ill-founded presumption that only remedy available to the defendant-petitioner was to file an appeal under Section 96 CPC against the ex-parte judgment and decree. This patently illegal approach adopted by the learned Courts below has been found running contrary to the law laid down by the Hon'ble Supreme Court as well as

this Court, because of which the impugned orders cannot be sustained.

The identical question of law fell for consideration of the Hon'ble Supreme Court in **Mahesh Yadav and another Vs. Rajeshwar Singh and others, 2009 (2) SCC 205**, wherein it was held by the Hon'ble Supreme Court that when an ex-parte decree is passed, defendants would have more than one remedies. He may file a suit contending that the decree was obtained fraudulently. He may file an application under Order 9 Rule 13 CPC for setting aside the ex-parte decree. He may prefer an appeal against the ex-parte judgment and decree. Such a defendant, in a given case, may also file an application for review.

The relevant observations made by the Hon'ble Supreme Court in **Mahesh Yadav's** case (supra), reiterating the law laid down in **Bhanu Kumar Jain's** case (supra), read as under: -

“The proviso appended to Order IX Rule 13 of the Code of Civil Procedure postulates that when an ex parte decree has been passed against some of the defendants and it is necessary to set aside the entire decree, the Court is not powerless to do so. If an application for setting aside the ex parte decree was maintainable at the instance of the appellants, we fail to understand as to why a separate suit was required to be filed. When an ex parte decree is passed, the defendant may have more than one remedies. He may file a suit contending that the decree was obtained fraudulently. He may file an application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree. He may prefer an appeal from the ex parte judgment and decree. In a given case, he may also file a review application.

In Bhanu Kumar Jain v. Archana Kumar & Anr. 2005 (2)

RCR (Civil) 781: [(2005) 1 SCC 787], this Court held:

"26. When an ex parte decree is passed, the defendant (apart from filing a review petition and a suit for setting aside the ex parte decree on the ground of fraud) has two clear options, one, to file an appeal and another to file an application for setting aside the order in terms of Order 9 Rule 13 of the Code. He can take recourse to both the proceedings simultaneously but in the event the appeal is dismissed as a result whereof the ex parte decree passed by the trial court merges with the order passed by the appellate court, having regard to Explanation appended to Order 9 Rule 13 of the Code a petition under Order 9 Rule 13 would not be maintainable. However, Explanation I appended to the said provision does not suggest that the converse is also true."

It was, however, observed:

"28. It is true that although there may not be a statutory bar to avail two remedies simultaneously and an appeal as also an application for setting aside the ex parte decree can be filed; one after the other; on the ground of public policy the right of appeal conferred upon a suitor under a provision of statute cannot be taken away if the same is not in derogation or contrary to any other statutory provisions."

Similar view was taken by the Hon'ble Supreme Court in **Rabindra**

Singh Vs. Financial Commissioner, Punjab and others, 2008 (7) SCC 663.

So far as the delay on part of the petitioner-defendant in filing his application under Order 9 Rule 13 CPC is concerned, it also ought to have been condoned by the learned Courts below. It is so said because rules of procedure are meant for advancing the cause of justice. In the very nature of things, there cannot be a straight-jacket formula, which might be applied in every given fact situation. Unless it is pleaded and proved by the non-applicant that the applicant did not come to the Court in time intentionally, with a view to take undue advantage and for causing serious prejudice to the non-applicant, learned Courts should be liberal in condoning the delay, because such a litigant would not be benefited in approaching the Court late. The basic rule in this regard is that as and when the applicant shows a sufficient cause, the delay should be condoned making an endeavour to decide the lis between the parties on merits, instead of putting the aggrieved party to a disadvantageous position only because of technical grounds.

The abovesaid view taken by this Court also finds support from a judgment of the Hon'ble Supreme Court in **State of Bihar Vs. Kameshwar Prasad Singh, 2000 (9) SCC 94**. The Hon'ble Supreme Court, while referring to numerous earlier judgments and reiterating the view consistently taken, about the approach to be adopted by the Courts below, on the question of condonation of delay, in para Nos.9 to 12 of its judgment in **Kameshwar Prasad Singh's** case (supra), held as under: -

*“Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in **Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors. 1987 (2)***

SCR 387 held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala

fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

After referring to the various judgments reported in New India Insurance Co. Ltd.v. Shanti Misra 1975 (2) SCC 840, Brij Inder Singh v. Kanshi Ram AIR 1917 PC 156, Shakuntala Devi Jain v. Kuntal Kumari 1969 (1) SCR 1006, Concord of India Insurance Co. Ltd. v. Nirmala Devi 1979 (4) SCC 365, Lala Mata Din v. A. Narayanan 1969 (2) SCC 770, State of Kerala v. E.K. Kuriyipe 1981 Supp SCC 72, Milavi Devi v. Dina Nath 1982 (3) SCC 366 O.P. Kathpalia v. Lakhmir Singh 1984 (4) SCC 66, Collector, Land Acquisition v. Katiji 1987 (2) SCC 107, Prabha v. Ram Parkash Kalra 1987 Supp. SCC 339, G. Ramegowda, Major v. Spl. Land Acquisition Officer 1988 (2) SCC 142, Scheduled Caste Coop. Land Owning Society Ltd. v. Union of India 1991 (1) SCC 174, Binod Bihar Singh v. Union of India 1993 (1) SCC 572, Shakambari & Co. v. Union of India 1993 Supp (1) SCC 487, Ram Kishan v. U.P. SRTC 1994 Supp (2) SCC 507 and Warlu v. Gangotribai 1995 Supp (1) SCC 37; this Court in State of Haryana v. Chandra Mani & Ors. 1996 (3) SCC 132 held:

"It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private

party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of altitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every

day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach in justice oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

*To the same effect is the judgment of this Court in **Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma 1996 (10) SCC 634 : 1996 (3) RCR (Civil) 583.***

*In **Nand Kishore v. State of Punjab 1995 (6) SCC 614**, this Court under the peculiar circumstances of the case condoned the*

delay in approaching this Court of about 31 years. In N. Balakrishnan v. M. Krishnamurthy 1998 (7) SCC 123, this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack malafides or is not shown to have been put forth as a part of dilatory strategy, the court must show utmost consideration to the suitor. In this context it was observed:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding,

much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

Looking into the facts and circumstances of the case, as noticed earlier and with the object of doing substantial justice to all the parties concerned, we are of the opinion that sufficient cause has been made out by the petitioners which has persuaded us to condone the delay in filing the petitions. Dismissing the appeals on technical grounds of limitation would not, in any way, advance the interests of justice but admittedly, result in failure of justice as the impugned judgments are likely to affect not only the parties before us, but hundreds of other persons who are stated to be senior than the respondents. The technicalities of law cannot prevent us from doing substantial justice and undoing the illegalities perpetuated on the basis of the impugned judgments. However, while deciding the petitions, the reliefs in the case can appropriately be moulded which may not amount to unsettle the settled rights of the parties on the basis of judicial pronouncements made by the courts regarding which the State is shown to have been careless and negligent. It is paramount consideration of this Court to safeguard the interests of all the litigants and persons serving the Police Department of the

State of Bihar by ensuring the security of the tenure and non disturbance of accrual of rights upon them under the prevalent law and the rules made in that behalf. Accordingly delay in filing the petitions is condoned.”

Reverting to the fact situation of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, it is unhesitatingly held that the learned Courts below misdirected themselves, while passing their respective impugned orders, which have been found patently illegal, being contrary to the law laid down by the Hon'ble Supreme Court, thus, the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by learned Courts below have been found patently illegal and have resulted in serious miscarriage of justice, the same cannot be sustained. Accordingly, the impugned orders are hereby set aside. The application of the petitioner-defendant under Order 9 Rule 13 CPC would stand allowed. Order dated 11.08.2003, whereby he was proceeded against ex-parte and ex-parte judgment and decree dated 23.02.2005 are also set aside.

Consequently, since the matter remained pending for quite some time, learned trial Court is directed to make an endeavour to decide the suit afresh at an early date, restarting the proceedings from the stage, immediate before the defendant-petitioner was proceeded against ex-parte. The learned trial Court shall grant reasonable opportunity to both the parties for leading their respective evidence, including cross-examination of each other's witnesses and shall decide

the suit as expeditiously as possible, in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, present revision petition stands allowed, however, with no order as to costs.

11.01.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No