

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

113

CR No.146 of 2018 (O & M)
Date of Decision:14.02.2018

Hukam Singh

...Petitioner

Versus

Laxmi Narain

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tushar Gautam, Advocate
for the petitioner.

Mr. Tanmoy Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Defendant-petitioner is in the revision petition against the order dismissing application for setting aside ex parte decree, affirmed in appeal also. Defendant-petitioner, who was served and had engaged counsel, was proceeded ex parte as neither the counsel nor the defendant-petitioner or his clerk attended the hearing on 22.04.2008. Since the petitioner did not take any step to set aside the ex parte proceeding, therefore, ex parte judgment and decree was also passed on 10.06.2008. Petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure on 17.10.2008. Petitioner pleaded that his Advocate had informed him that the case has been adjourned to 29.09.2008.

Both the Courts have examined the case set up by the petitioner and found it to be without any merit. Both the Courts have held that the application filed under Order 9 Rule 13 is time barred as the application could only be filed as per Article 123 within 30 days from the date of decree. The Court has also found that the counsel has not been produced

who had informed him that the case has been adjourned to 29.09.2008. The Courts have further noticed that neither the brief of the counsel nor the file of the case or the diary of the counsel has been produced.

I have heard learned counsel for the parties at length and with their able assistance gone through the documents filed.

As per Article 123 of the Schedule Attached to the Limitation Act, which is extracted as under:-

“ARTICLE 123

Starting point of limitation

The limitation is 30 days from the date of the ex parte decree; Naresh Industrial Corporation v. Ganesh Oil & General Mills, (1994) 1 CCC 875 (Raj).

When it is not the case of the defendant that summons was not duly served, the period of limitation for moving an application for setting aside an ex parte decree does not start from the date of the knowledge of the ex parte decree; Naresh Industrial Corporation v. Ganesh Oil & General Mills, (1994) 1 CCC 875 (Raj).”

The limitation for filing the application for ex parte decree is 30 days. The time from which period begins to run has been divided into two parts; one from the date of decree and second in case the summons were not duly served, from the date of knowledge.

In the present case, it is not in dispute that summons were served and the defendant had engaged counsel, who was appearing on his

behalf. Such being the position, the application filed by the petitioner-defendant was clearly barred by time.

Still further, as noticed neither the counsel who had informed the petitioner about the next date has been produced in evidence nor his brief or case file or his diary have been produced.

In view thereof, there is no scope for interference.

Hence, this revision petition is dismissed.

14.02.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No