

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

112

CR-2109-2018 (O&M)
Date of Decision : 11.5.2018

Haveli Ram

....Petitioner

vs.

Rajesh Khanna

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioner.

Mr. Tribhuwan Nath Sarup, Advocate
for the respondent-Caveator.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the order of the Courts below dismissing an application for setting aside the ex parte proceedings.

The admitted facts are that the eviction petition was going on and the petitioner was duly represented by the counsel. However on 31.3.2012 none appeared on behalf of the petitioner and he was proceeded against ex parte. Ultimately on 12.12.2012 the petition was allowed ex parte after recording the ex parte evidence of the landlord-respondent. On 11.7.2014 the petitioner moved the application for setting aside the ex parte proceedings stating that his counsel had never told him about the case and that he had come to know about the same only when he received the summons from the Executing Court. The Court below disbelieved this version and dismissed the claim and that is how the petitioner is before me.

Learned counsel for the petitioner has vehemently argued that

once the petitioner had engaged a counsel it was primarily duty of the counsel to appear and the petitioner could not be penalized for omission of the advocate. He has relied upon the decision of the Madras High Court in the matter of “Sagayam Engineering Works vs. M/s Srivatsa Tube Corporation 1988 AIR (Madras) 237”. In that case what the Court had found was that even after obtaining the decree, the decree holder had written four letters to the judgment debtor and had not mentioned anything about the decree. He has also relied upon the decision of Bombay High Court in the matter of “Lachhiram Chudiwala (H.U.F.) vs. Bank of Rajasthan Limited 2006 (6) BCR 559”. In this case the High Court was dealing with the position where the trial Court in its discretion had allowed an application for setting aside the ex parte decree.

In my opinion, this revision must fail. Even if the petitioner can justify his absence on 31.3.2012 there is no justification for him not even contacting his advocate for a period of more than two years thereafter. The bald explanation that it was the fault of the advocate cannot hold water in all circumstances.

Consequently, the appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

11.5.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No