

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

Civil Revision No.3126 of 2018 (O&M)

Date of decision: May 16, 2018

Master Capital Services Limited

...Petitioner

Versus

Laxman Swarup Darbari and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

INDERJIT SINGH, J.

Petitioner Master Capital Services Limited has filed this revision petition against respondents Laxman Swarup Darbari and Mahesh Darbari under Article 227 of the Constitution of India for setting aside the order dated 20.03.2018 passed by learned Addl. Civil Judge (Senior Division), Ludhiana, vide which the application filed by defendant-respondent No.2 under Order 9 Rule 13 read with Section 151 CPC was allowed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that defendant-respondent No.2, who was original defendant No.2 in the matter of Civil Suit No.82 of 19.4.2002 titled as 'Master Capital Services Ltd. vs. Laxman Swarup Darbari and Anr.'

decided finally on 19.5.2014, filed an application under Order 9 Rule 13

CPC read with Section 151 CPC, seeking setting aside of ex-parte judgment and decree dated 19.5.2014 by pleading that he was not a necessary party in the matter and no decree could be passed against him as he was only a power of attorney holder of defendant No.1 and had no privity of contract with the plaintiff. It is stated in the application that defendant No.1 died during pendency of the suit and despite the plaintiff having full knowledge of the same, no efforts were made to implead legal heirs of defendant No.1. All transactions of the matter took place at New Delhi and courts at Ludhiana had no jurisdiction. It is further stated that applicant-defendant No.2 moved application under Section 8 of Indian Arbitration and Reconciliation Act, 1996 on his first appearance in the case on 11.05.2005 and reply to said application was filed by the plaintiff on 24.08.2007 and application was not decided till 09.05.2012 despite filing of written arguments by defendant no.2 on 06.08.2008 and applicant was proceeded against ex-parte on 9.5.2012. It is further stated that an application dated 05.09.2012 was filed by defendant No.2 for setting aside the ex-parte proceedings and no reply to said application was filed and said application was not decided till 11.03.2014, when defendant No.2 was proceeded against ex-parte and thereafter the matter was decided ex-parte on 09.05.2014. It is further submitted that the Court was bound to decide application moved by defendant No.2 under Section 8 of the Arbitration and Reconciliation Act, which remained pending for seven years and the applicant was put to great inconvenience and hardship as he was permanent resident of New Delhi. The applicant was not informed by his counsel regarding order dated 11.03.2014 and regarding the ex-parte judgment and decree dated 19.05.2014. It is further stated that applicant came present in

person on 05.03.2014 when Advocates were on strike and he was advised that he need not to come present repeatedly. Applicant-defendant No.2 came to Ludhiana on 22.10.2014 to inquire about the case personally by visiting the court. When he failed to receive any information from his counsel, then he engaged new counsel and came to know about orders dated 11.03.2014 and 19.05.2014.

Notice of the application was served upon the plaintiff, who appeared through counsel and contested the application by filing a reply stating that application was not maintainable, time barred and there are no grounds for setting aside the ex-parte judgment and decree dated 19.05.2014.

From the pleadings, following issues were framed:-

1. *Whether there exist sufficient ground for setting aside ex-parte judgment and decree dated 19.5.2014 and order dated 11.3.2014 qua defendant No.2?OPP for defendant No.2*
2. *Whether the said application is not maintainable?OPR*
3. *Whether the said application is within limitation?OPP for defendant No.2*
4. *Relief.*

Thereafter, the matter was fixed for evidence of the applicant, who deposed as AW-1 through his affidavit and tendered documents i.e. decree sheet dated 19.05.2014. On the other hand, Kashmir Singh, employee of plaintiff, appeared as DW-1 and closed the evidence.

Issues No.1 to 3 were decided in favour of the applicant-defendant No.2. Consequently, vide impugned order dated 20.03.2018, the ex-parte judgment and decree dated 19.05.2014 and earlier ex-parte order dated 11.03.2014 were ordered to be set aside qua defendant No.2 (present

respondent No.2).

Aggrieved from the above-said order dated 20.03.2018, present revision petition has been filed.

From the perusal of the record, I find that learned lower Court, after considering the facts and circumstances of the case and evidence before it, found that there is substance in the contention of applicant-defendant No.2 that he was subjected to great inconvenience and harassment as he had to travel from Delhi to attend hearings in the matter and returned without any effective proceedings for seven long years, in the matter of suit till he being proceed against ex-parte and thereafter for about one and half years after moving the application for setting aside the ex-parte proceedings, which remained pending. The Court below further held that aforesaid facts are of great importance as they would show that applicant had every reason to believe that matter was not being proceeded effectively and thus he took the liberty to believe that he could not afford to attend the proceedings on few hearings. Learned lower Court also held that applicant-defendant No.2 came to Ludhiana to inquire about the matter on 27.10.2014, when he came to know about the ex-parte order dated 11.03.2014 and ex-parte decree dated 19.05.2014.

The Court below after discussing the evidence and the period of long seven years since his appearance held that no effective proceedings were carried out and when he absented in the year 2012, he filed application for setting aside ex-parte proceedings against him, even, that application remained pending without effective proceedings for one and a half years. Therefore, in view of all these facts, the Court below found that explanation

given by defendant No.2, explaining the delay, is satisfactory and condoned

the delay. Otherwise also, on merits, the case of defendant No.2 before the Court below is that firstly he filed application under Section 8 of the Arbitration and Conciliation Act for referring the matter to an Arbitrator, which remained pending and that application was not decided. The plea of defendant No.2 is that he acted as attorney of defendant No.1 and when defendant No.1 died during the pendency of the suit, the power of attorney came to an end and he could not be held liable personally.

The perusal of ex-parte judgment dated 19.05.2014, copy of which has been placed on record, further shows that it is a case of plaintiff that defendant No.1 through defendant No.2 approached the plaintiff company with an intention to buy and sell the shares and securities listed in the National Stock Exchange through the plaintiff company and as such in this regard an agreement dated 11.09.2000 was executed between the parties, which shows that defendant No.2 had acted only as attorney of defendant No.1.. Further averment in the plaint as noted down in the judgment dated 19.05.2014 is that defendant no.2 being the attorney holder of defendant no.1 used to visit the office of the plaintiff company at New Delhi and he used to give instructions personally to the staff members of the plaintiff company regarding the sale and purchase of specific shares on behalf of defendant no.1.

In the facts and circumstances, it is to be seen whether defendant No.2 is liable personally for the liability of defendant No.1 being attorney of defendant No.1 and after the death of defendant No.1, defendant No.2 can be held, in any way, liable and whether the decree can be passed against defendant No.2. All these facts are to be determined by the Court on merits to decide the case substantially and finally.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while passing the impugned order. The impugned order dated 20.03.2018 passed by learned Addl. Civil Judge (Sr. Divn.), Ludhiana, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

May 16, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No