

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

Civil Revision No. 4223 of 2018
Date of Decision : 11.07.2018

M/s Sant Security Services (Regd.) through its Manager and another
... Petitioners

Versus

Gurdev Singh ...Respondent

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present :- Mr. Aayush Gupta, Advocate
for the petitioners.

Mr. Maneesh Kumar Bali, Advocate
for the respondent.

B.S. Walia, J (Oral)

1. Prayer is for setting aside the order dated 17.08.2017, Annexure P-3 passed by the learned Civil Judge, (Junior Division), Ludhiana i.e. EXE/32 of 2017, whereby the petitioner was proceeded exparte and further order dated 08.01.2018 Annexure P-7 passed by the learned Civil Judge, (Junior Division), Ludhiana, whereby the application (Annexure P-5) under Order 9 Rule 13 of the CPC for setting aside ex parte order dated 17.08.2017 (Annexure P-3) had been dismissed.

2. Respondent/plaintiff had filed a suit for recovery of Rs.53,163/- on account of amount payable by the petitioner to the respondent/plaintiff for services rendered. The said suit was decreed exparte vide judgment and decree dated 14.10.2015 i.e. Annexure P-1. Application under Order 9

Rule 13 of the CPC was filed for setting aside the exparte judgment and decree dated 14.10.2015. Although, learned counsel for the petitioner is unable to disclose the date on which the application (Annexure P-2) under Order 9 Rule 13 of the CPC was filed yet he states it was filed in the year 2017. In the meantime, execution petition was filed by the plaintiff/respondent. No application was filed by the petitioner for stay of the execution proceedings under Order 41 Rule 26 of the CPC. On 17.08.2017, the petitioner was proceeded exparte in the execution proceedings and learnt about having been proceeded exparte only two/three days prior to the filing of the application for setting aside of exparte order dated 17.08.2017. The application was dismissed on the ground that the same had not been filed within a period of limitation of 30 days, besides the Court was not satisfied that the non-appearance on 17.08.2017 was unintentional.

3. Learned counsel for the petitioner contended that period of 30 days is stipulated only for setting aside exparte decree dated 17.08.2017 under Article 123 of the Limitation Act, 1963 and that no limitation period is stipulated for moving an application under Order 9 Rule 7 of the CPC and further that there was no requirement that an application under Order 9 Rule 7 of the CPC had to be filed within a period of 30 days from the date of exparte order. Reference in this context is made to the decision of this Court in '**Nirmala Devi versus Hari Krishan, 2015 (5) RCR (Civil) 580.**' Relevant extract of the aforesaid decision is reproduced as under :-

This Court in **Ghanshyam Dass Vs. Kamal Kishore and another 2011(4) Civil Court Cases 343** examined the provisions of Order 9 Rule 7 CPC and held that there is no

period of limitation prescribed for filing application for setting aside *ex parte* proceedings. The limitation prescribed is only for *ex parte* decree. The relevant observation reads as under:-

“7. So far as the question of limitation for filing an application under Order IX Rule 7 of the Code is concerned, the same is not *res integra*. It has been held by this Court in various judgments that no period of limitation is prescribed for filing an application for setting aside *ex parte* proceedings under Order IX Rule 7 of the Code. In *Trilok Singh v. Smt. Ganga Devi*, 1983(1) RLR 688, it was observed that period of 30 days under Article 123 of the Limitation Act, 1963, applies only to an *ex parte* decree and not to *ex parte* proceedings and that there was no limitation provided for setting aside the *ex parte* proceedings, which depends upon the discretion of the Court, on the peculiar facts of each case. The said observation was reiterated by this Court and followed in *Siri Chand v. Ram Dhan and another*, 1989 (1) Rev.L.R 481.

8. In another judgment rendered in *Delhi Development Authority v. Shanti Devi*, AIR 1982 Delhi 159, it was observed that there was no rule that an application under Order IX Rule 7 of the Code is to be filed within 30 days from the date of order of proceeding *ex parte*. Similar view was taken in *Palani Nathan v. Devanai Ammal*, (1989) 2 Mad L.J. 259.

9. This Court in a later judgment rendered in *Kuldip Kaur v. Gurdeep Singh*, 1994(1) Civil Court Cases 0001, after referring to all the previous judgments, also held that no limitation is provided for setting aside *ex parte* proceedings under Order IX Rule 7 of the Code.

10. Hence, there is no force in the argument of learned counsel for the petitioner that as the application is filed at a much belated stage, the same is not maintainable.”

5. Learned counsel further contends that the application had been moved pleading that the applicant had been diligently appearing before the executing Court on each and every date either in person or through counsel and was shocked to learn two-three days ago that his bank account had been seized on account of exparte order passed in the execution proceedings and in the circumstances, it was apparent that sufficient cause had been made out besides the execution proceedings had not been decided therefore the application ought to have been allowed by the learned executing Court.

6. Learned counsel for the respondent on the other hand has opposed the restoration on the ground that the application for setting aside exparte proceedings had not been filed within 30 days of the order proceeding exparte against the petitioner, therefore, the same was not maintainable and liable to be dismissed.

7. I have considered the submissions of learned counsel for the parties and am of the view that Article 123 of the Limitation Act, 1963 stipulates period of 30 days for moving an application for setting aside of exparte decree and not an application under Order 9 Rule 7 of the CPC for setting aside order proceeding exparte in the suit.

8. Besides in view of the decision of this Court in **Nirmala Devi's** case supra, it has been categorically held by relying upon various decisions that no period of limitation is prescribed for filing of application for setting aside exparte proceedings under Order 9 Rule 7 of the CPC and

that there is no rule under Order 9 Rule 7 of the CPC that application for setting aside exparte proceedings has to be filed within a period of 30 days. In the circumstances, the issue would be covered under Article 137 of the Limitation Act, 1963, which lays down that any other application for which no period of limitation is prescribed elsewhere, the limitation is three years from the date of accrual of the cause of action.

9. The petitioner having moved an application stating therein that he had been diligently appearing on each and every date either in person or through counsel and not being aware as to how the impugned order had been passed and having come to know of the exparte proceedings only on account of attachment of the bank account on going to the bank for operating the bank account and having moved the application immediately thereafter, the learned trial Court ought not to have adopted a technical and pedantic approach and ought to have allowed the application for setting aside the exparte proceedings order against the petitioner. More so, in view of the fact, that the execution proceedings had not been decided and was pending adjudication.

10. In the light of the position as noted above, the application is allowed. Impugned order is set aside subject to payment of costs of Rs.10,000/- to the respondent. Petitioner is allowed to participate in the execution proceedings in accordance with law subject to payment of costs of Rs. 10,000/- to the respondent. Parties to put in appearance before the learned executing court on 30.07.2018.

(B.S. Walia)
JUDGE

11.07.2018

Manpreet

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No