

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 114

CR-4229-2018

Date of decision : 06.07.2018

Digamber Sharma

..... Petitioner

VERSUS

Bhagat Raj Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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

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DEEPAK SIBAL, J. (ORAL)

The facts in brief which need to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein specific performance of agreement dated 20.09.2010. Upon being put to notice, the petitioner appeared before the Trial Court through his counsel on 16.04.2013. Thereafter for over three years while the suit remained pending, the petitioner failed to appear before the Trial Court either personally or through his counsel. Due to his non-appearance, ex-parte proceedings were conducted against him leading to the passing of an ex-parte judgment and decree dated 12.08.2016. About a year thereafter i.e. on 10.07.2017 the petitioner filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree on the ground that after he had appeared before the Trial Court his counsel told him that he need not come again and therefore, he did not attend the Court proceedings. Instead, he continued to inquire about the status of the case from his counsel on telephone who somewhere in the year 2014 informed him that the suit had

been dismissed in his favour. However, on 05.07.2017 the petitioner was informed by his neighbour namely Ramesh Singh about the aforesaid ex-parte judgment and decree passed against him. After making inquiries from the Court when such fact was established, he filed the application seeking setting aside of the ex-parte judgment and decree. The application was dismissed by the Trial Court and so was his appeal leading to the filing of the present petition before this Court.

Learned counsel for the petitioner has been heard and the record perused.

It is not disputed that in the suit for specific performance filed against him, on being put to notice, on 16.04.2013 the petitioner put in appearance before the Trial Court. On 17.10.2013 the petitioner was given last opportunity to file written statement as also to file reply to the application filed for interim injunction. However, he failed to do so. Rather, both he and his counsel absented themselves from the proceedings. The position with regard to non-appearance by himself or his counsel continued till 28.11.2013 on which date the petitioner was proceeded against ex-parte. On 01.02.2014 an application was filed on behalf of the petitioner for setting aside the ex-parte proceedings. Such application was allowed and the matter was adjourned to 25.02.2014 for filing of the written statement by the petitioner on which date written statement on behalf of the petitioner was filed. Thereafter the issues were framed and on 20.08.2014 two witnesses of the plaintiff (respondent herein) were examined in chief. Their cross-examination was deferred for 29.10.2014 on which date again neither the petitioner nor his counsel appeared and therefore, after giving

him sufficient opportunities, he was again ordered to be proceeded against ex-parte. The non-appearance of the petitioner and his counsel continued for about two years thereafter leading to the passing of ex-parte judgment and decree dated 12.08.2016.

From the above facts, which speak for themselves it is apparent that the petitioner was well aware of the filing and pendency of the suit against him. He tried his best to get the same delayed as he was initially ordered to be proceeded against ex-parte on 28.11.2013 which order on his application was later set aside. Later, he again absented from the proceedings for a couple of years leading to the passing of an ex-parte judgment and decree against him. Thus, it cannot be accepted that the petitioner was not aware of the proceedings. Rather, the petitioner has clearly attempted to abuse the process of law.

There is another aspect of the matter. The ex-parte judgment and decree was pronounced on 12.08.2016 and the application for setting aside the same was filed on 10.07.2017. The same was clearly barred by limitation without any satisfactory explanation for the delay.

In view of the above, no fault can be found in the concurrent findings recorded by both the Trial Court as also the Appellate Court rejecting the case of the petitioner for setting aside of the ex-parte judgment an decree passed against him.

Dismissed.

06.07.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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