

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

CR No.4686 of 2016 (O&M)

Date of decision : January 30, 2018

Jaswinder Singh

..... Petitioner

Versus

Gurmukh Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Shamsheer Singh Gill, Advocate for the petitioner.

None for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

As per office report, respondent has refused to accept notice.

Heard.

Impugned in the present revision petition is the order dated 26.05.2016 (Annexure P-10) passed by learned Addl. District Judge, Ludhiana, vide which the order dated 06.07.2013 (Annexure P-9) passed by learned Addl. Civil Judge (Sr. Divn.), Khanna, was set aside and the case was remanded for framing issues and allowing the parties to lead evidence, in an application under Order 9, Rule 13 CPC accompanied by an application filed under Section 5 and 14 of The Limitation Act, 1963.

A perusal of the order passed by the learned Addl. Civil Judge (Sr. Divn.), Khanna, shows that an application was filed for setting aside the ex parte judgment and decree dated 30.07.2012 and ex parte order dated 01.02.2011. Along with the said application, another application under

Section 5 of The Limitation Act, 1963 was also filed. Learned Addl. Civil Judge (Sr. Divn.), Khanna obtained the reply to the said application and without framing issues, summarily dismissed the application.

In an appeal, the lower appellate court after discussing the averments made by both the parties held that in this case, issues are required to be framed and evidence is required to be led. Therefore, the order dated 06.07.2013 (Annexure P-9) was set aside with a direction to frame issues and allow the parties to lead evidence.

I am of the view that the respondent has made certain averments as to when he came to know about the ex parte decree. He also made some averments that he met with an accident at Jharkhand and remained busy in the proceedings before the police. Later on, his truck was apprehended by the financier. Therefore, he came to know about the ex parte order later on. The respondent-defendant had stated certain facts giving the dates, which were fixed in the case and the purpose for which these were fixed. On the last date of hearing, the case was fixed for filing reply to the application for giving specimen of the handwriting of the respondent-defendant.

Learned counsel for the petitioner states that the application filed for setting aside the ex parte order is time barred. He has produced the following authorities:

1. ***“Mahabir Singh vs Subhash & Ors.”*** 2008(1) RCR (Civil) 32.
2. ***“M/s. John Implex (Pvt.) Ltd. & Anr. vs Athul Kapur & Ors.”***, 2009(4) R.C.R. (Civil) 76.
3. ***“Sri Lal Sah and others vs Gulabchand Sah (dead) through his L.Rs.”***, 1993 CivCC 380.

4. *“M/s. Mahindra & Mahindra Finance India Ltd vs Dharampal & another”*, 2013(3) CivCC 128.
5. *“Madan Lal (since deceased) & Ors. Vs Prabhu Dayal & Ors.”*, 2009(2) CivCC 789.
6. *“R.M. Enterprises vs Radhey Sham Gupta”*, 2014 (17) R.C.R. (Civil) 407.
7. *“Satya Infrastructure Ltd and others vs Satya Builders Pvt. Ltd.”*, 2016(2) CivCC 260.
8. *“Jit Singh vs Sarwan Singh”*, 1997(3) R.C.R.(Civil) 329.

It is further contended that respondent-defendant was proceeded ex parte twice.

I am of the view that certain grounds have been pleaded in the application filed by the respondent-defendant for condonation of delay as well as application for setting aside the ex parte proceedings, which are inter-linked. Therefore, there is nothing wrong with the impugned order, in directing the trial court for framing of issues and allowing the parties to lead evidence. Thus, there is no ground to interfere in the same.

As such, the present petition is dismissed.

Keeping in view that fact that this case was originally instituted in the year 2006 and now it has become more than 11 years old, the trial court is directed to decide the said application expeditiously, preferably within six months.

(KULDIP SINGH)
JUDGE

January 30, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No