

(112) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4474 of 2018

Date of decision: 28.09.2018

Harjinder Singh

.... Petitioner

Versus

Kuldip Singh and another

..... Respondent

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

Present: Mr. R.K. Arya, Advocate for the petitioner.

B.S. Walia, J.

[1] Revision petition has been filed under Article 227 of the Constitution of India for setting aside ex parte judgment and decree dated 27.09.2013 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.), Batala as also order dated 14.09.2015 (Annexure P-2) passed by the learned Civil Judge (Jr. Div.), Batala whereby application for setting aside ex parte judgment and decree dated 27.09.2013 was dismissed as also order dated 18.09.2017 (Annexure P-3) passed by the learned Additional District Judge, Gurdaspur whereby miscellaneous appeal of the petitioner was dismissed. Learned counsel contended that the impugned order was legally unsustainable as the petitioners counsel never informed the petitioner of his having been proceeded exparte on 05.08.2013 or for any evidence nor the petitioner had any knowledge about the passing of exparte judgment and decree besides his absence from the proceedings in the civil suit was not intentional nor wilful but due to unavoidable circumstances.

[2] Brief facts of the case leading to the filing of the present petition are that ex parte judgment and decree dated 27.09.2013 was passed against the petitioner/defendant in the suit for specific performance of agreement to sell (Ex.P1) whereupon the petitioner/defendant moved an application for setting aside of ex parte judgment and decree dated 27.09.2013 under Order 9 Rule 13 CPC taking up the plea that his absence from the proceedings in the civil suit was not intentional nor wilful but due to unavoidable circumstances and of his having filed an application from the date of knowledge. Stand of the respondents/plaintiffs was that the petitioner/ defendant intentionally had not appeared in Court and had been proceeded ex parte when he did not turn up to lead evidence despite availing several opportunities granted to him.

[3] The petitioner/defendant apart from examining himself also examined Gurwinder Singh and Harwinder Singh. However, none of the petitioner/defendant- witnesses turned up to face cross-examination. Accordingly, the examination in chief of said witnesses could not be read into evidence in the absence of their having faced cross examination.

[4] Apart from the above, record reveals that the petitioner/defendant initially filed written statement and contested the suit whereupon issues were framed on 12.02.2008. Thereafter, the Respondents/plaintiffs examined their witnesses. However, on 28.05.2012 none turned up on behalf of the petitioner/defendant. Accordingly, petitioner was proceeded ex parte on 28.05.2012. However, on the basis of application moved by the petitioner/defendant, vide order dated 20.12.2012, ex parte proceedings dated 28.05.2012 were set aside on payment of costs of Rs.500/-. Thereupon, the case was fixed for evidence of the respondents/plaintiffs which was concluded on 21.05.2013. Thereafter, the

case was fixed for evidence of the petitioner/defendant but despite availing numerous opportunities, the petitioner failed to lead evidence. A perusal of the ziminy orders reveals that on 31.05.2013 in the presence of counsel for the parties the case was adjourned to 09.07.2013 for entire evidence of the petitioner defendant on his own responsibility but even on the adjourned date despite counsel for the parties being present, no evidence was present on behalf of the petitioner defendant whereupon the case was adjourned to 18.07.2013 for defendants evidence at own risk and responsibility, On 18.07.2013 also despite presence of counsel for parties no defendant evidence was present whereupon the case was adjourned to 05.08.2013 for defendant evidence subject to last opportunity and subject to payment of Rs. 200/- as costs to be deposited with the legal aid authority, Gurdaspur but even on 05.08.2013 neither the petitioner nor his counsel put in appearance and after calling the case several times, at 3.30 p.m. the petitioner was proceeded ex parte and case adjourned to 27.08.2013 for ex parte consideration. On 27.08.2013 the case was adjourned to 27.09.2013 on which date ex parte judgment and decree was passed. Thereafter, the petitioner/defendant moved an application under Order 9 Rule 13 on 01.10.2013 to set aside the ex parte judgment and decree dated 27.09.2013.

[5] Although the petitioner/defendant was proceeded ex parte on 05.08.2013 eventually leading to passing of ex parte judgment and decree dated 27.09.2013, yet application was filed by the petitioner/defendant only for setting aside ex parte judgment and decree without challenging order dated 05.08.2013 vide which he was proceeded ex parte.

[6] A perusal of the order passed by the learned Civil Judge (Jr. Div.), Batala reveals that the petitioner/defendant was proceeded ex parte

petitioner/defendant was set aside vide order dated 30.12.2012. Thereafter, again petitioner/defendant was proceeded ex parte vide order dated 05.08.2013 and ex parte judgment and decree was passed on 27.09.2013. The only plea of the petitioner/defendant before the learned trial Court was that his absence, was not intentional nor wilful but due to unavoidable circumstances or due to unawareness. No valid reason has been pointed out for non-appearance of the petitioner/defendant on 05.08.2013 resulting in ex parte proceedings being ordered against him and exparte judgment and decree being passed against him on 27.09.2013. Besides, perusal of the order passed by the learned Civil Judge, Batala reveals that several opportunities had been granted to the petitioner/defendant to adduce evidence including last opportunity but still petitioner failed to produce any evidence. Plea that his counsel did not inform about the proceedings or of his having been proceeded exparte is a lame excuse in the absence of any complaint having been filed / action having been taken against the counsel. Moreover, once the petitioner had been proceeded ex parte earlier, it was all the more expected of the petitioner to have been vigilant about the proceedings. The petitioner has also not disclosed whether he had contacted his counsel and when as also how and when out of the blue he learnt about the exparte judgment and decree. Therefore, it is clear that the petitioner/defendant had intentionally and wilfully not appeared in the Court on 31.05.2013, 09.07.2013, 18.07.2013, 05.08.2013 for leading evidence eventually leading to his being proceeded ex parte on 05.08.2013 and exparte judgment and decree on 27.09.2013. Besides, order dated 05.08.2013 ordering ex parte proceedings against the petitioner were never challenged although the ex parte judgment and decree dated 27.09.2013 was challenged.

[7] In the absence of any valid reason having been pointed out for non appearance of the petitioner in Court on 05.08.2013 and 27.09.2013, no ground whatsoever is made out warranting interference with the well-reasoned order passed by the Courts below.

[8] Accordingly, finding no merit in the Revision petition, the same is dismissed.

28.09.2018
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(B.S. Walia)
Judge

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