

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

**CR No.4875 of 2014
Date of decision:21.03.2018**

Hem Raj

... Petitioner

Vs.

Vikramjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rahul Shrama, Advocate for
Mr. Harish Goyal, Advocate
for the petitioner.

Mr. Ajeet Pal Singh Pakka, Advocate
for the respondent.

AMIT RAWAL J.

The petitioner-defendant is aggrieved of the impugned orders dated 18.10.2010 (Annexure P-2) and 31.01.2014 (Annexure P-1), whereby the application under Order 9 Rule 13 of Code of Civil Procedure (in short 'CPC') for setting aside the ex parte judgment and decree dated 05.05.2007 had been dismissed and appeal preferred against the same was also dismissed.

The respondent-plaintiff instituted a suit for recovery of ₹2,16,000/- under the provisions of Order 37 CPC. The service upon the petitioner was effected on 25.04.2007. Since nobody appeared and represented the petitioner, he was proceeded against ex parte. The

aforementioned ex parte order was passed on the basis of refusal report dated 19.04.2007. On 05.05.2007, the trial Court decreed the suit. The application dated 04.10.2008 under Order 9 Rule 13 CPC was filed on the premise that the petitioner-defendant acquired the knowledge of the ex parte decree 20 days ago when he visited the office of Halqa Patwari and obtained jamabandi, wherein he was informed that there was already attachment in view of the execution filed by the respondent-plaintiff.

The report of process server noticing the refusal of petitioner-defendant was managed and procured. In fact, there was no report of refusal nor process server affixed the copy of summons outside wall of the house of petitioner. He was an old man and generally remained out of station, therefore, the absence was not willful.

The application was contested by the respondent-plaintiff. It was objected that the application was not maintainable as it should have been filed under Order 37 Rule 4 CPC instead of Order 9 Rule 13 CPC. The cause shown was not sufficient. The aforementioned application was dismissed and it is in this background, the present revision petition has been filed.

Mr. Rahul Sharma, learned counsel for the petitioner submitted that both the trial Court has dismissed the application for setting aside the ex parte decree, vide impugned order but lost the sight of the fact that there was neither any willful nor intentional default on the part of the petitioner-defendant. No specific finding has been given whether the petitioner has been properly served or not. The trial Court was required to effect the

service under the provisions of Order 5 Rule 20 CPC, in case of refusal of summons, though the same was emphatically denied. No such pronote or receipt, on the basis of which suit filed, was ever executed. Non-service of summons was specific circumspect, therefore, the impugned order is liable to be set aside.

Per contra, Mr. Ajeet Pal Singh Pakka, learned counsel appearing on behalf of the respondent-plaintiff submitted that the order under challenge is perfectly legal and justified, much less do not call for any interference.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Rahul Sharma, Advocate.

The entire procedure has been prescribed for appearing in the suit/summons received under the provisions of Order 37 CPC. On receipt of the summons, defendant is required to move an application within a period of 10 days for leave to defend and thereafter, the respondent-plaintiff is summoned for judgment. In my view, the petitioner has not been able to give sufficient and reasonable explanation in moving the application with promptitude but as noticed above, the same was submitted on 04.10.2008 i.e. after almost 1 year 5 months. The petitioner-defendant intended to bring the case within a period of limitation by creating the cause of action 20 days before filing of application having approached the office of Halqa Patwari but the purpose of approaching the said office has not come on record. He knew about the execution of pronote and receipt. The petitioner-defendant

failed to disclose that in case the ex parte proceedings are set aside, whether he would be entitled to take the leave, in essence, whether he had positive or defensible defence or it was moon shine. The aforementioned ingredients are conspicuously absent in the application, though the application was required to be filed under Order 37 Rule 4 CPC. Non-mentioning of the provisions of statute would not nullify the application. This is what has been noticed by both the Courts below. The findings of the Courts below in setting aside the ex parte proceedings do not call for any interference which were passed on the basis of the evidence brought on record led by respective parties for adjudication of the application under Order 9 Rule 13 CPC. The arguments of Mr.Sharma, Advocate have not been able to cut ice for interference in the impugned order.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 21, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No