

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

CR No.5236 of 2016 (O&M)
Date of decision : 18.04.2018

Rakesh Maggon and another

...Petitioners

Versus

M/s Ganesh Rubber Industries

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ishwar C. Garg, Advocate for the petitioners.

Ms. Ameena Singh, Advocate for
Mr. Vikram Anand, Advocate for respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendants-petitioners are in the revision petition against the order passed by the learned trial Court refusing to set aside the ex parte judgment and decree. The order passed by the learned Civil Judge, has been affirmed in appeal also.

The suit for recovery was filed against the defendants-petitioners on 14.08.2008 which was remained pending in the Court for almost 5 years. The issues were framed on 16.03.2010. Initially, defendants were proceeded against ex parte, however, learned trial Court condoned the default and set aside the ex parte proceedings vide order dated 03.05.2012.

The defendants were once again proceeded ex parte on 29.05.2013. It may

be noted that on 28.05.2013, the counsel representing the defendants was present in the Court. The case was adjourned for the next day for the purpose of evidence of the plaintiff. However, learned counsel appearing for the defendants-petitioners did not appear. Hence, ex parte evidence was recorded and, thereafter the ex parte judgment was passed on 30.05.2013. The application for setting aside the ex parte judgment and decree was filed on 30.07.2013.

Both the Courts have appreciated the facts available on the file and dismissed the application finding no merit therein. The reasons assigned by the petitioner while praying for setting aside ex parte judgment and decree have not been believed by the learned Courts below.

This Court has heard the learned counsel for the petitioners at length and with his able assistance gone through the paper book.

Learned counsel for the petitioners has submitted that the Courts were closed during the vacations in the month of June and, therefore, the application was filed on 30.07.2013. It is not disputed before the Court that the Court re-opened in the first week of July. As per Section 4 of the Limitation Act, if the period of limitation for filing the suit, appeal or application expires on the day when the Court is closed, the limitation gets extended to the day when the Court re-opens after vacations. In the present case, the Courts re-opened in the first week of July 2013 whereas the application was filed on 30.07.2013. No reason is forthcoming why the application was not filed immediately after the Court re-opened. Still further, the suit has remained pending for almost 5 years. The suit is for recovery of the amount on the basis of the negotiable instruments. Such

being the position, this Court does not find any good ground to interfere with the order passed by the trial Court.

In view of the above, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

18.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No