

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

CR No.6234 of 2016 (O&M)

Date of decision:27.11.2018

Manohar Lal Khatri

... Petitioner

Vs.

Dogar Dass Sachdeva Trust Fazilka and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Vikas Kumar, Advocate
for the petitioner.

AMIT RAWAL J.

The present revision petition is directed against the impugned orders dated 24.04.2015 and 25.04.2016, whereby, an application under Order 9 Rule 13 CPC and appeal preferred thereto at the instance of the petitioner-defendant for setting aside the ex parte judgment and decree dated 20.05.2010, have been dismissed.

Respondent no.1-plaintiff instituted the suit for possession on 12.08.1998 in which the petitioner was proceeded ex parte on 21.12.1999 and ultimately, resulted into ex parte judgment and decree dated 20.05.2010. In fact, at the time of institution of the suit, defendant was posted as Patwari at Zira and did not have the knowledge of pendency of suit at Fazilka. There was no such report qua the refusal of the summons, nor any proclamation under law was ever effected by beat of drums, therefore, the absence was neither willful nor intentional. On acquiring the knowledge, the application

was filed on 03.10.2012.

Mr. Vikas Kumar, learned counsel appearing on behalf of the petitioner submitted that the findings of the Courts below in not producing the service record are wholly erroneous as it was categorically stated in deposition that in the year 1999, he was posted at Zira and his version had been supported from the report of Process Server (Ex.P4). In such circumstances, refusal of summons did not arise. The alleged refusal was not on behalf of the petitioner but one Harbans Lal Sharma, who had nothing to do with the case and prayed for setting aside the ex parte judgment and decree subject to any terms and conditions.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, the plaintiff had instituted the suit not only against the petitioner-defendant but many other defendants including defendant no.2- Azad Hind Ram Leela Society. The aforementioned suit was contested through its President. The alleged acquisition of knowledge from Bimla Sachdeva was falsified as no such date of meeting with Bimla Sachdeva had been disclosed. The limitation to file the application is 30 days from the date of passing of ex parte judgment and decree or acquisition of knowledge. The application concededly was filed after 02 years of the judgment and decree. One of the other defendants who was also proceeded against ex parte had also filed an appeal against the ex parte judgment and decree but the same was dismissed by the Lower Appellate Court on 29.02.2012. The stand of the petitioner-defendant could not have been rebutted, but better than what Bihari Lal could have, thus, it is highly

improbable the applicant was not in the knowledge of the ex parte judgment and decree. It is an attempt to overcome the decision rendered by the Lower Appellate Court in the appeal preferred by Bihari Lal.

In view of the above, there is no illegality and perversity in the impugned orders. The revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

November 27, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No