

CR-6579-2017

Date of Decision: 26.07.2018

Lachhman Singh

.....Petitioner

Versus

Kuldeep Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Mr. Ravish Bansal, Advocate
for the applicant/petitioner.**DEEPAK SIBAL, J. (ORAL)**

Through the present petition challenge is made to the order dated 04.05.2017 passed by the Additional Civil Judge (Senior Division), Nihal Singh Wala, District Moga (for short 'the Trial Court') through which an application filed by the petitioner under Order 37 Rule 4 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') for setting aside the *ex parte* judgment and decree dated 08.08.2014, has been dismissed.

The facts in brief which are required to be noticed are that the respondent filed a summary suit against the petitioner under Order 37 Rule 2 CPC for recovery of Rs.9,00,000/- along with interest. Such suit had been filed on the basis of a pronote dated 23.10.2013 executed by the petitioner. In the suit, since the petitioner had refused to accept the summons, he was proceeded against *ex parte* leading to an *ex parte* judgment and decree dated 08.08.2014. Thereafter, in execution of the aforesaid decree, conditional warrants were issued against the petitioner, in pursuance of which, he was produced before the Executing Court on 21.04.2016 on which date he undertook to pay Rs.5.00 lakhs to the respondent decree-holder on the

next date of hearing i.e. 30.05.2016. However, on the adjourned date, the petitioner absconded. Later, the petitioner filed an application under Order 37 Rule 4 CPC seeking setting aside of the *ex parte* judgment and decree dated 08.08.2014. Such application was dismissed by the Trial Court through the order under challenge.

Learned counsel for the petitioner submits that the petitioner was never served in the suit and the report of refusal on the part of the petitioner is witnessed by the respondent himself which makes the report doubtful. He further submits that the statement given by the petitioner on 21.04.2016 before the Executing Court was under threat and coercion and, therefore, it was not obligatory on his part to act in accordance thereof. It is submitted that all that the petitioner wants is a decision on the suit after contest.

The afore submissions made by learned counsel for the petitioner have been considered in which no merit is found.

There is a report by the process server dated 24.07.2014 which clearly records that the petitioner refused to receive summons of the suit filed against him. In the absence of any further corroborative evidence favouring the petitioner, such report cannot be disregarded only on the ground that it is witnessed by the respondent/plaintiff especially when no *mala fide* against the process server has even been alleged.

In the application dated 27.07.2016 filed by the petitioner under Order 37 Rule 4 CPC seeking setting aside of the *ex parte* judgment and decree passed against him, he has categorically stated that he came to know about the *ex parte* judgment and decree only after he engaged Mr. Nasib

Bawa, Advocate on 15.07.2016. It was thus stated that the application which was filed on 27.07.2016 was well within time. Such a declaration by the petitioner is found to be false as it is admitted by counsel for the petitioner that on 21.04.2016, the petitioner had appeared before the Executing Court and suffered a statement that he would make part payment of Rs.5.00 lakhs to the respondent. Thus, at least on 21.04.2016, he had knowledge of the *ex parte* decree passed against him.

Further, on 21.04.2016, the petitioner had appeared before the Court and stated before it that he would pay Rs.5.00 lakhs to the respondent. On his statement, the matter was adjourned to 30.05.2016 for making of payment by the petitioner. However, on 30.05.2016, the petitioner absconded. Such conduct on the part of the petitioner is not appreciable.

The stand taken by the petitioner that he gave the undertaking before the Executing Court with regard to payment of Rs.5.00 lakhs to the respondent under threat and coercion, without any corroboration, is also not appreciable.

If the statement made by the petitioner before the Court on 21.04.2016 was under coercion or otherwise, as stated by him now, he should have gone to the same Court and said so. Rather, in complete disregard to his undertaking given by him before the Court, he absconded. Through such action on his part, it only appears that the plea taken by him now is an afterthought. If there was any merit in the same, he should have had the courage to say so before the same Court where he had earlier given the undertaking.

In view of the above, no merit is found in the present petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

26.07.2018

Neha

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No