

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

**CR No.7905 of 2017
Date of decision:07.02.2018**

Ranjit Singh

... Petitioner

Vs.

State Bank of India

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Panwar, Advocate
for the petitioner.

AMIT RAWAL J.

The petitioner-defendant no.2 is in revision petition against the order dated 30.11.2015 (Annexure P-1) passed by the Civil Judge (Senior Division), Kaithal, whereby, the application filed under Order 9 Rule 13 of Code of Civil Procedure for setting aside the ex parte judgment and decree dated 01.11.2010, has been dismissed and judgment and decree dated 19.07.2017 (Annexure P-2) rendered by the Additional District Judge, Kaithal, vide which the appeal, has also been dismissed.

Mr. Sandeep Panwar, learned counsel for the petitioner submitted that the respondent-plaintiff/State Bank of India instituted a civil suit for recovery of ₹95,854/- which was decreed, vide ex parte judgment and decree dated 01.11.2010 (Annexure P-3). He acquired the knowledge of the ex parte judgment and decree aforesaid on 16.04.2012 when the officials of the Bank/decreed-holder visited him and apprised about the decree. The ex parte proceedings were initiated on 13.06.2008. On acquiring the

knowledge of the ex parte decree, after inspection of the file, an application bearing no.16 of 2012 dated 16.05.2012 was moved stating therein that petitioner-defendant was never served properly as the summons were sent at the address of H.No.875/20, Partap Gate, Kaithal but the process server in his reports dated 13.02.2008 stated that “*adampata*” means “not available” and on 22.02.2008 reported refusal at the address of milk dairy at Dhand Road, i.e., second address, though there was no such address of defendant no.2. The alleged '*munadi*' conducted in the Kaithal City on 28.04.2008 was also not in accordance with law as the same was not witnessed by any of the witness. Non-appearance of the applicant/defendant no.2 was not intentional but only to the reasons mentioned above.

The trial Court on the basis of the aforementioned, issued notice to the respondent-plaintiff which was contested. Since the parties were at variance, the trial Court framed as many as 4 issues including the issue of relief.

In order to prove his case, defendant no.2-Ranjit Singh examined himself as AW1 and reiterated the contents of the application but stated that he stood as a guarantor and never resided at Partap Gate, Kaithal and nor refused to accept the summons. Liability of the guarantor is co-extensive with that of principal guarantor as per the provisions of Section 128 of Contract Act.

The petitioner was never served properly in the proceedings as the process server never came to his house, though the address given in the plaint was correct. The plaintiff examined Sat Narain as RW-1 to assert that

he went to the house No.875/20 Partap Gate, Kaithal for the service of summons for 25.03.2008, from where he came to know that the addressee milk dairy was running milk dairy situated at SBI road Kaithal but he refused to accept the same. SBI Kaithal and Dhand road are entirely separate places, at the distance of one kilometer from each other. No harm and prejudice would be caused, in case the ex parte judgment and decree is set aside as the petitioner would contest the suit by explaining rational of standing surety of principal debtor.

I have heard the learned counsel for the petitioner-defendant no.2 , appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sandeep Panwar. No explanation has come forth in moving the application after 1 ½ year as the application for setting aside the ex parte judgment and decree was moved on 16.05.2012, whereas, ex parte judgment and decree was passed on 1.11.2010. The address given in the suit and present revision petition is the same, therefore, the plea that he never resided at the aforementioned address, is not tenable. Refusal of the summons were pasted on the premises of defendant no.2. Even perusal of the zimni order dated 25.03.2008 showed the refusal of service. In order to avoid miscarriage of justice, the Court had ordered for effecting the service through '*munadi*'. Perusal of report dated 28.04.2008 showed that munadi was also duly effected through one Jai Kishan. If at all the munadi was not effected in the manner and mode as being suggested by the petitioner, nothing prevented him to examine the aforesaid Jai Kishan. The Courts have to be liberal in setting aside the ex parte proceedings but not in

the money decree where the petitioner stood as guarantor.

The findings rendered by both the Courts below are based upon the evidence and the factual aspect which do not enable this Court to form a different opinion than the one already given.

No ground is made out for interference in the orders under challenge.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 07, 2018
savita

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