

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

CR No.810 of 2018

Date of decision: 7th February, 2018

Rajinder Singh & another

... Petitioners

Versus

M/s Tiwana Oil Mills

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amandeep S. Jawandha, Advocate for the petitioners.

FATEH DEEP SINGH, J.

This civil revision by petitioner Rajinder Singh and another is against an order dated 30.11.2017 (Annexure P1) whereby an application under Order IX Rule 13 read with Section 151 CPC for setting aside ex-parte judgment and decree dated 02.03.2013 stood dismissed by the Court of Civil Judge (Senior Division) Fatehgarh Sahib.

Upon hearing learned counsel for the petitioner Mr.Amandeep Singh Jawandha.

The brief background that needs to be highlighted is that a Civil Suit bearing No.833-T dated 03.06.2010/03.08.2012 titled as 'M/s Tiwana Oil Mills v. M/s Raj Dairy Farm and another' was decided by the Court of learned Civil Judge (Senior Division), Fatehgarh Sahib whereby ex-parte judgment and decree dated 02.03.2013 was passed against the

defendants. It is consequent thereupon, an application under Order IX Rule 13 CPC read with Section 151 CPC was moved by the defendants for setting aside this ex-parte judgment and decree dated 02.03.2013 on the grounds that the then applicant Judgment Debtors (now petitioners) had no knowledge about passing of the ex-parte judgment and decree as he at the relevant time was residing at Chandigarh when the alleged service through proclamation was undertaken at an address at village Jhar Sahib, District Ludhiana and therefore, was not within the knowledge of the petitioners. The Court below has taken cognizance of the fact, as is reflected from the impugned order (Annexure P1) that the Judgment Debtor-petitioner was earlier served through registered cover as well as dasti summons and then through publication, but failed to appear despite due service, and thus, was well within the knowledge of pendency of the proceedings.

The applicant in his application for setting aside ex-parte judgment and decree, has taken the plea that he was unaware of passing of the judgment and decree and it was subsequently on 07.01.2016 he was informed by a person known to him and he immediately applied for certified copy of the said judgment and decree, and after procuring the same on 19.01.2016 filed the application in question.

The contentions have been denied in the reply by the other side on the plea that a false averment has been raised and the petitioner

was fully aware of the proceedings culminating into the judgment in question and he was ordinarily resident as well as carrying on his avocation in the area of village Jhar Sahib, Tehsil Samrala, District Ludhiana. After framing of issues and upon evidence by the two sides, the trial Court dismissed the application after returning findings on issue No.1 in favour of the plaintiff (now respondent).

As is there and is apparent, when the summons were returned back un-executed, the order for substituted service and thereafter through publication was made and in spite of the same, none put in appearance. It is the own stand of the petitioner, quite reflective from the impugned orders, that even in the power of attorney filed in proceedings under Order IX Rule 13 CPC the petitioner then applicant has given his original address as of village Jhar Sahib, and in his cross-examination accepts the fact that his firm M/s Raj Dairy Farm is also located in the said place and thus, was ordinarily resident as well as carrying on his avocation in the area of village Jhar Sahib, Tehsil Samrala, District Ludhiana. Thus, the plea put forth before the Courts that he was ordinarily resident of Chandigarh, is falsified by his own documentary as well as oral stand. Rather to the mind of this Court, the petitioner has tried to mislead the Court by intentionally making wrong averments to this effect. The impugned order certainly is correct appreciation and does not calls for any indulgence by this Court. The petition being hopelessly without any

merit stands dismissed with costs for wasting precious time of the courts and knowingly making false averments, which are assessed at Rs.10,000/- to be deposited by the petitioner with the Sub-Divisional Legal Services Committee, Samrala, District Ludhiana.

(FATEH DEEP SINGH)
JUDGE

February 7, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No