

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

RSA No.4158 of 2018 (O&M)

Date of decision : 13.07.2018

Krishan Baldev @ Kishan Nath and another

...Appellants

Versus

Gugga Marri Parbandhak through its President Mukand Lal and authorized
signatories

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Sidhu, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

This Regular Second Appeal has been filed against the order passed by the learned trial Court while dismissing the application under Order 9 Rule 13 CPC for setting aside the ex parte decree and order passed by the learned Appellate Court affirming the same.

Office had pointed out that this Regular Second Appeal is not maintainable, however, learned counsel for the appellants insisted that it should be listed before the Court. Although, this Court is also of the considered opinion that the Regular Second Appeal is not maintainable against the order dismissing the application under Order 9 Rule 13 CPC, however, without going into the technical objection, this Court has heard the learned counsel for the appellants at length.

It is not in dispute that a suit was filed against the petitioners-

defendants on 22.07.2006. Notice was served on the petitioners-defendants then they engaged a counsel and filed the reply. Thereafter, four opportunities were availed for leading evidence. On a subsequent date, counsel pleaded no instructions and, therefore, ex parte proceedings were initiated on 28.07.2008. A decree for mandatory injunction and permanent injunction was passed against the defendants on 09.09.2008. An application for setting aside the ex parte decree was filed on 01.02.2009.

Learned trial Court after examining the evidence led by the petitioners for setting aside ex parte decree, dismissed the application vide order dated 03.09.2016. Strangely, the appeal was filed under Order 43 Rule 1 CPC against the order passed on the application under Order 9 Rule 13 CPC as also on merits against the ex parte decree.

Learned First Appellate Court after re-appreciating the facts and the evidence available on the file has recorded a finding that the appellants have been taken a contradictory stand while explaining the reasons for ex parte proceedings. The First Appellate Court has recorded as under:-

“Rather she has further admitted that, she has no where averred in application that her counsel has not returned the brief. Meaning thereby, she is the applicant, who tried to explain delay of 135 days, by shifting burden upon her counsel, but at the same time, contradictory statement of AW1 Chanchal (appellant) is sufficient to show that she is blowing hot and cold in the same breath, which is not helpful to her, specially in those circumstances, when in further cross-examination, she has categorically admitted that “the day when exparte order was passed, I came to

court to contest case.” Again she tried to riggal out from her testimony by saying that her counsel had not allowed to produce her in the court. She has further admitted that “it is correct that exparte proceedings was conducted due to her own fault”. Meaning thereby, she is AWI Chanchal (appellant) who kept on shifting her stand on each and every step, but truth oozed out from her mouth, when she admitted her presence in the court complex, on the day when she was proceeded against exparte, and when exparte judgment and decree was passed.”

It is apparent that the appellants are trying to blow hot and cold in the same breath. The dispute is with regard to possession of some premises in a temple wherein the defendants-appellants are alleged to be residing. The Managing Committee of the religious institution had filed a suit for mandatory injunction directing the defendants-appellants to vacate the premises. A decree passed on 09.09.2008 is not allowed to be executed. The Courts below also formed an opinion that the entire efforts of the appellants are to hold on to the possession with any right, title or interest in the property.

In these circumstances, there is no ground to interfere.

Regular Second Appeal is dismissed.

13.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No