

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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SAO No.39 of 2018 (O&M)
Date of decision : 31.08.2018

Sohan Singh

...Appellant

Versus

Col.Karan Singh

....Respondent.

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present:- Mr.Munish Puri, Advocate
for the appellant.
Mr.Jasdev Singh Mehndiratta, Advocate
for the respondent.

Harinder Singh Sidhu, J.

This appeal has been filed impugning judgment and order dated 15.12.2017 of the learned Additional District Judge, Pathankot whereby instead of deciding the appeal of the respondent against ex parte judgment and decree dated 27.9.2016 it has set aside judgment and decree of the trial court and remanded the case to the learned trial court to decide the issues as incorporated in para No.15. The issues as under:-

- “(1) Whether the appellant is permanent resident of 54-55 Swaran Andhra Colony, Phase 1, Balaje Nagar Road, Yapral, Secundrabad-87 and had no knowledge of the pendency of the present suit? OPA
- (2) Whether the appellant was not duly served and Khakara Taraf Narot Jaimal Singh is not last known address of the appellant? OPA
- (3) Whether the claim of the appellant is not maintainable as the appellant had the knowledge of the suit and was contesting the different suits by mentioning the address of Kharkara Taraf Narot Jaimal Singh and also filed written statement and affidavits if so to what effect? OPR.
- (4) Relief.”

Learned counsel for the appellant referred to a judgment of Hon'ble Supreme Court in “Bhanu Kumar Jain Vs. Archana Kumar and another”, 2005(1) SCC 787 wherein it has been held that in a case where ex parte decree is passed, the defendant has two clear options, one is to file an appeal and another to file an application for setting aside the order in terms of Order 9 Rule 13 of the Code. He can also take recourse to both the

proceedings simultaneously. But in the event the appeal is dismissed as a result whereof, the ex parte decree passed by the trial court merges with the order passed by the appellate court, having regard to Explanation appended to Order 9 Rule 13 of the Code a petition under Order 9 Rule 13 would not be maintainable. The scope of appeal against the ex parte order has been spelled out in para No.24 of the aforesaid judgment which reads as under:-

“24.An appeal against an ex parte decree in terms of Section 96(2) of the Code could be filed on the following grounds:

- (i) the materials on record brought on record in the ex parte proceedings in the suit by the plaintiff would no entail a decree in his favour and
- (ii) the suit could not have been posted for ex parte hearing.”

Learned counsel for the petitioner contends that effect of the impugned order is that even after the decision of the appeal, the trial court is to decide the issues as in a petition under Order 9 Rule 13 of the CPC which is not permissible.

Accordingly, revision petition is allowed. The impugned order is set aside. The appeal is restored to its original number. Learned lower appellate court is requested to decide the appeal afresh in terms of its scope as spelt out in para No.24 of the judgment (supra).

Learned counsel for the petitioner states that the petitioner has also filed an application under Order 41 Rule 27 of the CPC. The same would be considered by the lower appellate court in accordance with law.

Disposed of.

(Harinder Singh Sidhu)
Judge

31.08.2018
sd

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No