

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 222

Case No. : C. R. No. 2131 of 2017 (O&M)

Date of Decision : July 12, 2019

Veer Bhan Petitioner

vs.

Parveen Kumari and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Aayush Gupta, Advocate
for the applicant/petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 13.11.2013 passed by Civil Judge (Junior Division), Kurukshetra (for short – the Trial Court) dismissing an application filed by the petitioner under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex-parte judgment and decree dated 22.10.2012. Also under challenge is the order dated 07.11.2016 passed by the Additional District Judge, Kurukshetra (for short – the Appellate Court) through which the appeal filed by the petitioner against the aforesaid order dated 13.11.2013 was dismissed.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition, are that respondent no. 1 filed a suit seeking therein possession of a house bearing municipal House Tax No. 234 situated in Ward No. 6, Ladwa (for short – the suit property). Mesne profits with consequential relief of permanent injunction were also sought.

On being put to notice, the petitioner, who was defendant no. 1

in the suit, failed to appear before the Trial Court. On the basis of ex-parte evidence led by respondent no. 1, on 22.10.2012, her suit was decreed by the Trial Court. On 25.10.2013, the petitioner filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside of the aforesaid ex-parte judgment and decree dated 22.10.2012. Such application was filed on the ground that in the suit instituted by respondent no. 1, no summons were served upon him and that he learnt about the ex-parte judgment and decree against him only on 14.10.2013 when Shri R. P. Kaushik, Advocate informed him about the same. Along with the aforesaid application, the petitioner filed an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the application.

After going through the evidence which was led by the parties as also perusing the record of the case, the Trial Court concluded that in the main suit, the petitioner had been duly served through his wife but in spite of the same, he had failed to put in appearance. The record of the proceedings before the Executing Court further revealed that the petitioner had appeared through his counsel in the execution proceedings initiated by respondent no. 1 on 08.04.2013 and therefore, the stand taken by him in his application filed under Order 9 Rule 13 CPC that he came to know of the ex-parte judgment and decree dated 22.10.2012 only on 14.10.2013 was found to be false. Accordingly, the application filed by the petitioner under Order 9 Rule 13 CPC was dismissed. The petitioner filed an appeal against such dismissal, which was also dismissed by the Appellate Court. It is in these circumstances that the petitioner has approached this Court through the present revision petition.

Learned counsel for the petitioner has been heard.

In his application filed under Order 9 Rule 13 CPC, the petitioner had specifically asserted that that he came to know of the ex-parte judgment and decree dated 22.10.2012 passed against him only on 14.10.2013. However, the record of the proceedings before the Executing Court in the proceedings initiated by respondent no. 1 to execute the ex-parte decree dated 22.10.2012 clearly reveals that the petitioner had appeared through his counsel in the execution proceedings on 08.04.2013. Thus, he did not approach the Court with clean hands.

Even otherwise, both the Trial Court and Appellate Court have concurrently concluded that the petitioner was duly served through his wife in the civil suit filed by respondent no. 1 but in spite of the same, he willfully absented himself from the court proceedings. In fact, the Appellate Judge personally examined the thumb impressions of the petitioner's wife on the summons with her admitted thumb impressions and then concluded that the petitioner had been served through his wife in respondent no. 1's suit. Nothing has been pointed out before this Court to even doubt such finding.

In view of the above, no merit is found in the present revision petition and the same is accordingly dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

July 12, 2019
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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>