

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 101

Case No. : CR No. 6385 of 2018 (O&M)

Date of Decision : March 27, 2019

Alakhgir Petitioner

vs.

Som Nath and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Sanjay Verma, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 11.09.2015, passed by the Civil Judge (Senior Division), Yamuna Nagar at Jagadhri (for short – the Trial Court) dismissing the application filed by the petitioner under Order 9 Rule 13 CPC through which he had sought the setting aside of order dated 27.03.2008, through which the petitioner had been proceeded against ex-parte as also the ex-parte judgment and decree dated 05.03.2009 passed against him. Also under challenge is the order dated 10.08.2018 passed by the Additional District Judge, Yamuna Nagar at Jagadhri (for short – the Appellate Court) through which the appeal filed by the petitioner against the aforesaid order dated 11.09.2015 was dismissed.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition, are that the respondents had filed a

suit seeking therein possession of one shop as detailed by them in the head note of the plaint (for short – the suit property). Possession of the suit property was sought by the respondents on the ground that the petitioner, who was the defendant in the suit, had failed to pay the rent for the use and occupation of the suit property. Damages for illegal and unauthorized use and occupation of the suit property were also sought by the respondents.

On being put to notice, the petitioner appeared before the Trial Court and filed his written statement, through which he refuted the respondents' claim. Thereafter, in the presence of the petitioner's counsel, the Trial Court framed issues. On an application filed by the petitioner under Order 35 Rule 3 CPC the matter was adjourned sine die. On 25.02.2008, on the appearance of both the parties before the Trial Court, the suit was again taken up for further proceedings and was adjourned to 15.03.2008 for payment of security as well as rent by the petitioner. However, no such payment was made by the petitioner resulting in the matter being adjourned to 27.03.2008 to enable the petitioner to make the due payment. On 27.03.2008, the learned counsel appearing for the petitioner made a statement that the petitioner was not making himself available for pursuing his case. Accordingly, through order dated 27.03.2008, the petitioner was proceeded against ex-parte. On the basis of ex-parte evidence led by the respondents, their suit was decreed on 05.03.2009. After more than three years of the passing of the ex-parte order, on 08.06.2011, the petitioner filed an application under Order 9 Rule 13 CPC seeking therein setting aside of the order dated 27.03.2008, through

which the petitioner was proceeded against ex-parte, as also to challenge therein the ex-parte judgment and decree dated 05.03.2009 passed against him. The application was dismissed by the Trial Court through its order dated 11.09.2015. The petitioner filed an appeal against such order of the Trial Court which met the same fate as his application. It is in the background of these facts that the present petition has been filed before this Court for the aforementioned reliefs.

Learned counsel for the petitioner has been heard.

On 20.03.2003, the respondents had filed a suit seeking therein possession of the suit property from the petitioner on the ground that the petitioner had failed to pay the agreed rent. Damages for illegal and unauthorized use and occupation of the suit property were also sought. On being put to notice, the petitioner had appeared before the Trial Court and filed his written statement. On 09.08.2003, in the presence of both the parties, the Trial Court framed issues. Thereafter, the petitioner filed an application under Order 35 Rule 3 CPC, which was allowed on 09.03.2006 and the matter was adjourned sine die.

The respondents challenged the order of the Trial Court dated 09.03.2006 before this Court through **CR No. 3511 of 2006 – Som Nath and others vs. Alakhgir**. On being put to notice, the petitioner appeared before this Court through his counsel and defended the aforesaid order. However, through order dated 30.01.2008, this Court allowed the respondents' petition and directed the parties to appear before the Trial Court on 25.02.2008. This Court further directed the petitioner to furnish

adequate tangible security towards the payable rent to the satisfaction of the Trial Court as also to deposit monthly rent by 7th of every month before the Trial Court. The Trial Court was granted liberty to place the amount of rent so deposited in a fixed deposit to be paid to the successful litigant.

As directed by this Court, the Trial Court took up the matter on 28.02.2008 and adjourned the same to 15.03.2008 to enable the petitioner to make deposits in terms of the aforesaid order of this Court. When no such deposit was made on 15.03.2008, the Trial Court adjourned the matter to 27.03.2008 requiring the petitioner to do the needful but even on that date, no deposit was made by the petitioner. Rather, the counsel appearing for the petitioner made a statement before the Trial Court that the petitioner was not available for pursuing his case. Accordingly, the Trial Court ordered the petitioner to be proceeded against ex-parte and on the basis of ex-parte evidence led by the respondents, decreed the respondents' suit on 05.03.2009.

From the afore narrated facts, it is clear that the petitioner actively participated in defending the respondents' suit before the Trial Court. He not only filed written statement but also got a favourable order on an application filed by him under Order 35 Rule 3 CPC. On challenge made by the respondents to such order through filing of a revision petition before this Court, the petitioner, through his counsel, defended such order. Through order dated 30.01.2008, this Court allowed the respondents' petition with a direction to the parties to appear before the Trial Court on 25.02.2008. It is not the case of the petitioner that no intimation was given

to him by his counsel appearing for him before this Court with regard to the aforesaid direction. This Court had also directed the petitioner to make deposits before the Trial Court with regard to the arrears of rent as also to pay future rent. The petitioner failed to comply with this direction and rather chose to absent himself from the proceedings. Remaining absent from Court proceedings in spite of having knowledge of the same as also for disregarding the directions given by this Court are acts of omission on the petitioner's part for which only he should suffer.

Even otherwise, the petitioner filed an application under Order 9 Rule 13 CPC on 08.06.2011 i.e. after over 03 years and 03 months of the passing of the order dated 27.03.2008 through which he was ordered to be proceeded against ex-parte. Thus, for over three years he never bothered to find out the result of the suit filed against him. No worthwhile reason for such delay is forthcoming from the record as also from the arguments addressed at the bar.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(DEEPAK SIBAL)
JUDGE

March 27, 2019
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.