

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 797 of 2019 (O&M)
Date of decision: 1.4.2019

Sukhdev Singh

.. Petitioner

v.

Sukhraj Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Anterpreet Singh, Advocate for the petitioner.

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AVNEESH JHINGAN, J. (Oral)

The present civil revision petition has been filed being aggrieved of the order dated 9.7.2015 passed by Civil Judge (Junior Division), Amritsar (hereinafter described as 'Civil Court') dismissing the application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short, 'CPC') and order dated 4.5.2016 passed by Additional District Judge, Amritsar (hereinafter described as 'Appellate Court') dismissing the appeal against the order dated 9.7.2015.

The facts necessary for adjudication of the present revision petition are summarized below:

In 2002, the respondent-plaintiff (hereinafter described as 'the respondent') filed a suit for specific performance of agreement dated 24.8.2000. In the said suit, the petitioner-defendant (hereinafter described as 'the petitioner') was proceeded *ex-parte* in December, 2002. An *ex-parte* judgment and decree was passed on 20.11.2003. In October, 2013 the

petitioner moved an application under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and decree. It was pleaded in the application that it was only in 2013 when Bailiff of the Court came for execution of the *ex-parte* judgment and decree that the petitioner gained knowledge about the *ex-parte* judgment and moved the application. The respondent never appeared in the application. The case was fixed for *ex-parte* evidence. In spite of availing opportunities, the petitioner failed to produce any evidence in the said proceedings. The Civil Court was left with no option except to dismiss the application vide order dated 9.7.2015. Aggrieved of the order, an appeal was filed. No reason was stated even in the appeal for non-production of evidence in the proceedings for setting aside *ex-parte* judgment and decree. The appeal was dismissed on 4.5.2016. Civil Revision No. 7172 of 2016 was filed in this Court. The same was withdrawn on 5.7.2017 with liberty to file a fresh one, for laying challenge to the initial order, whereby the petitioner was proceeded *ex-parte*. Now the present revision petition dated 29.1.2019 has been filed thereafter.

Learned counsel for the petitioner argues that the petitioner was not properly served and the Civil Court erred in proceeding *ex-parte*.

The contention raised has no merit. The conduct of the petitioner throughout has been such that it establishes that entire endeavour on his part is to delay the proceedings. He was proceeded *ex-parte* in December, 2002. *Ex-parte* judgment and decree was passed in November, 2003. It is pleaded that for the first time he came to know about *ex-parte* judgment and decree in 2013. Even if that is also accepted, it would be pertinent to note at this stage that in the proceedings to set aside the *ex-parte* judgment and decree, the petitioner availed sufficient opportunities

but failed to adduce any evidence in support of his contention. Neither in the appeal filed nor in the present petition any sufficient reason has been mentioned explaining the conduct of the petitioner for not leading evidence.

There is another aspect of the matter. The appeal was dismissed by the Appellate Court vide order dated 4.5.2016. The petitioner moves at his own convenient pace as the Civil Revision though filed in 2016 is ultimately argued before this Court on 5.7.2017 and that too after arguing for some time the same is withdrawn with liberty to file a fresh one on the same cause of action. Thereafter also, now the present petition is filed in January, 2019 i.e. almost after 1-1/2 years. No case has been made out for undoing the *ex-parte* order and *ex-parte* judgment and decree passed almost 15 years ago.

The civil revision petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

1.4.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No