

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

CR-7565-2019
Decided on : 09.12.2019

Jai Kishan

..... Petitioner

Versus

Karan Singh (deceased) through LR

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vijay Pal, Advocate
for the petitioner.

Manjari Nehru Kaul, J.

Prayer in the instant petition is for setting aside the impugned order dated 17.12.2015 (Annexure P-3) whereby the petitioner/defendant was proceeded against ex parte by the Addl. Civil Judge (SD), Hansi and the judgment and decree dated 25.04.2016 (Annexure P-4).

Learned counsel for the petitioner contends that the courts below failed to appreciate that the petitioner was in judicial custody in another criminal case and due to this reason, he could not appear before the learned trial court and it was only when he came out of the judicial custody on 01.08.2017 and tried to approach his counsel that it came to be revealed to him that the execution proceedings were going on against him before the learned Executing Court. It was further contended that even though he filed an application under Order 9 Rule 13 CPC against the ex parte judgment and decree, still the court below adopted a hypertechnical approach and passed the impugned order.

Heard and perused the impugned order passed by the court below.

Admittedly, the petitioner was in judicial custody and was released on 01.08.2017. However, it was well within the knowledge of the petitioner that the respondent had filed a suit for recovery against him. In this background, if the petitioner did not make any inquiry about the status of the civil suit and remained silent for a period of four months, no infirmity can be found with the impugned ex parte judgment and decree dated 25.04.2016 passed against him. Moreover, it cannot be believed that the petitioner came to know about the factum of ex parte proceedings only when conditional warrants were issued against him because as noticed by the court below, the conditional warrants had been served against the petitioner through his wife on 18.11.2017 and the application under Order 9 Rule 13 CPC was filed by the petitioner just a day prior to service of the conditional warrants i.e. 17.11.2017. Hence, it is very apparent that the petitioner sought the setting aside of the ex parte proceedings only when the conditional warrants were issued against him and had in fact all along been aware of the execution proceedings.

Consequently, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

09.12.2019

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No