

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No. 2359 of 2011 (O&M)

Reserved on : 08.08.2022

Date of Decision : 17.08.2022

Ghan Singh and Another

....Petitioners

Versus

Atma Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.S. Brar, Advocate for the petitioners.

Mr. Hardeep Singh, Advocate for respondent No.2.

Respondent Nos.1, 1-A, 1-B & 3 already proceeded ex-parte.

ALKA SARIN, J.

The present revision petition has been filed under Section 115 CPC challenging the orders dated 17.03.2008 and 13.09.2010 passed by the Trial Court and the lower Appellate Court, respectively, whereby the application filed by the defendant-petitioners for setting aside the *ex-parte* judgment and decree dated 20.02.2003 passed by the Trial Court in CS. No.281 of 20.08.1998 titled 'Atma Singh & Anr. vs. Roop Singh & Ors.' has been dismissed as well as their prayer for setting aside the *ex-parte* orders dated 15.10.1998 and 25.01.2000 has been rejected. The petitioners were defendant Nos.8 and 12 in the civil suit.

The brief facts relevant to the present *lis* are that a civil suit titled 'Atma Singh & Ors. Vs. Roop Singh & Ors.' was decreed *ex-parte* by the Trial Court vide judgment and decree dated 20.02.2003 against the defendant-petitioners. Before that, vide orders dated 15.10.1998 and 25.01.2000, some of the defendants, including the defendant-petitioners, were proceeded against *ex-parte*. It is the case set-up by the defendant-

petitioners that no personal service was ever effected and they never received the summons along with a copy of the plaint. The present defendant-respondent No.3 (Lachman Singh) was allegedly served through *munadi* but at that time he was not residing in the village as he was out of India w.e.f. February 1996 till April 2002. It was further submitted that the names of the defendant-petitioners had not been given correctly as the name of defendant No.8 is Ghan Singh but he had been mentioned as Gian Singh while the name of defendant No.12 is Jaswinder Kaur but her name had been mentioned in the plaint as Shinder Kaur and that there were no persons by these names.

Notice of the application was given to the plaintiff-respondents who filed a reply and contested the application taking preliminary objections that the application was time-barred. It was also contended that the defendant-petitioners were having full knowledge regarding the civil suit which was decreed on 20.02.2003 and are also knowing about the pendency of the execution application wherein warrants of possession had been issued by the Executing Court. It was submitted that service of all the defendants was duly affected and that the present application had been filed simply to prolong the execution proceedings.

The defendant-petitioners filed a rejoinder and thereupon the Trial Court framed the following issues :

1. Whether there exists a good ground for setting aside the *ex parte* judgment and decree dated 20.03.2003 ? OPA
2. Whether the application is barred by limitation ? OPR
3. Whether the application is for just to prolong the proceedings ? OPR
4. Relief.

Vide impugned order dated 17.03.2008 the Trial Court dismissed the application of the defendant-petitioners. Their appeal against the order passed by the Trial Court was also dismissed by the lower Appellate Court on 13.09.2010. Hence, the present revision petition.

Learned counsel for the defendant-petitioners has contended that the Courts below have erred in dismissing their application for setting aside the *ex-parte* judgment and decree dated 20.02.2003. According to counsel, the defendant-petitioners were never served in the civil suit and that they were also impleaded by giving wrong names. It has further been contended that the present defendant-respondent No.3 (Lachman Singh) was allegedly served through *munadi* but at that time he was abroad and thus could not have been served by way of *munadi*.

Per contra, learned counsel for the plaintiff-respondents has defended the impugned orders passed by the Courts below and submitted that the defendant-petitioners were well aware about the proceedings before the Trial Court but intentionally did not appear and cannot now turn-around and pray for setting aside the *ex parte* judgment and decree against them.

Heard.

The application dated 23.01.2004 for setting aside the *ex-parte* judgment and decree dated 20.03.2003 was filed by four defendants i.e. Bhagwan Kaur (original defendant No.3), Ghan Singh (original defendant No.8 and present defendant-petitioner No.1) Lachman Singh (original defendant No.9) and Jaswinder Kaur (original defendant No.12 and present defendant-petitioner No.2). However, only Ghan Singh stepped into the witness box as AW1. None of the other applicants came forward to depose in support of the case set-up in the application. Thus, apart from the bald

statement of Ghan Singh there is no other evidence available on the record produced by the defendant-petitioners. No process server was summoned nor were the service reports exhibited. Even the allegation that Lachman Singh (original defendant No.9) was abroad and could not have been served was not proved. In fact the Trial Court noted in the impugned order that “*the applicants failed to examine any witness despite of grant of a number of opportunities and ultimately the evidence of the applicants was closed by order of the Court on 8.4.2006*”. In the absence of any cogent and reliable evidence, the Courts below had no option but to non-suit the defendant-petitioners.

Further, as mentioned above, the application dated 23.01.2004 for setting aside the *ex-parte* judgement and decree dated 20.02.2003 was filed by four defendants including the present defendant-petitioners. After the Trial Court dismissed the said application vide impugned order dated 17.03.2008, the appeal was filed only by two of the original applicants i.e. the defendant-petitioners. The other two applicants i.e. Bhagwan Kaur (original defendant No.3) and Lachman Singh (original defendant No.9) did not challenge the order passed by the Trial Court and accepted the same. It is pertinent to mention here that Lachman Singh (original defendant No.9) was the person who it was alleged was out of the country and could not have been served by way of *munadi*. When the co-applicants of the defendant-petitioners have not come forward to support their own case the Court can draw an adverse inference against them. The counsel for the defendant-petitioners has also been unable to show how the application was within time.

In view of the discussion above, this Court finds no illegality or

error in the exercise of jurisdiction by the Courts below while passing the impugned orders. The present civil revision petition is without any merit and is dismissed. Pending applications, if any, also stand disposed off.

17.08.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO