

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

CR-5671-2022 (O&M)
Date of decision: 05.12.2022

Prem Singh

...Petitioner

Versus

Agnivesh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ajay Vijarania, Advocate for the petitioner.

H.S. MADAAN, J. (Oral)

Briefly stated facts of the case are that plaintiff Agnivesh had filed a suit for recovery of Rs.1,55,000/- against defendant Prem Singh which was pending in the Court of Civil Judge (Jr. Divn.) Charkhi Dadri. That suit had been filed on 14.08.2013. Notice of that suit was given to defendant, who was reported to have refused to accept service taking it as due service. Since he did not put in appearance, he was proceeded against ex parte, vide order dt. 16.05.2014. After recording ex parte evidence, the suit of the plaintiff was decreed, vide judgment and decree dt. 24.05.2014. Subsequently, the defendant appeared and filed an application under Order 9 Rule 13 CPC for setting aside ex parte judgment and decree dt. 24.05.2014, contending that he was never served in the case in accordance with law inasmuch as he had not received notice, summons or registered letter. The report of refusal on the summon

by the process server is wrong and had been manipulated by the plaintiff in collusion with process server. On 25.01.2014, the applicant/defendant was present in Court at Pilani Court in connection with a complaint under Section 427 IPC titled as 'Prem Singh Vs. Dharampal' since his presence there was necessary. He had come to know about the ex parte judgment and decree a week prior to by filing an application when his uncle Hari Ram informed his telephonically in that regard.

2. Notice of the application was given to the respondent/plaintiff who filed reply contesting the application, stating that since the applicant had failed to appear despite service, he was rightly proceeded against ex parte and then suit had been properly decreed, vide ex parte judgment and decree dt. 24.05.2014 and application has been filed only to delay the execution of the decree. For proper adjudication of the controversy between the parties, following issues had been framed, vide order dt. 11.01.2016:-

1. Whether the ex parte judgment and decree dt. 24.04.2014 can be set aside? OPA
2. Whether the defendant has no locus standi to file the present application? OPR
3. Whether the present application is not maintainable in the present form? OPR
4. Whether the defendant is estopped by his own act and conduct from filing the present application? OPR
5. Relief.

3. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

4. After hearing arguments, vide detailed order dt. 13.11.2017,

the trial Court dismissed the application.

5. The applicant/defendant preferred an appeal against that order before District Judge, Charkhi Dadri which was assigned to Addl. District Judge, Charkhi Dadri, who vide order dt. 14.01.2020 dismissed the same.

6. Now the applicant/defendant has approached this Court by way of filing the present revision petition.

7. I have heard learned counsel for the revisionist besides going through the record and I find that the revision petition is absolutely without any merit. Both the Courts below by properly analyzing the evidence adduced by the parties in view of the settled position, considering the facts and circumstances of the case have come to the conclusion that the revisionist/defendant was duly served inasmuch as he had refused to accept the service, considering that report of refusal to be proper service and he having not appeared in the Court, he was proceeded against ex parte and after recording ex parte evidence, suit of the plaintiff had been decreed way-back on 24.05.2014. The application for setting aside the ex parte judgment and decree was hopelessly time barred, since it was required to be filed within 30 days of passing of ex parte judgment and decree whereas the application was filed on 03.07.2014 much beyond that period. The applicant had not moved any application under Section 5 of the Limitation Act for condonation of delay, therefore, the applicant could not clear the bar of limitation provided under the Limitation Act and on merits also, he was unable to furnish any convincing explanation that he was not duly served in this case and his non-appearance in the

Court was not intentional or willful.

8. I do not find any illegality or infirmity in the orders passed by the Courts below which might have called for interference by this Court while exercising revisional jurisdiction. The defendant has successfully dragged the proceedings for a period of more than eight years, denying the plaintiff/decree holder an opportunity of reaping fruit of the decree in his favour. Allowing of application would amount to putting the clock back, having a fresh trial, in that way, the revisionist/defendant would be successful in delaying the matter. Further for that reason and also on merits, the revision petition is doomed for failure and is dismissed accordingly.

05.12.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No