

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

**CR-460-2020 (O&M)
Date of decision: 19.05.2023**

Manoj Kumar

...Petitioner

VS

Puran Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S.Bajaj, Advocate,
For the petitioner.

Mr. Tejinderbir Singh, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

Petition herein under Article 227 of Constitution of India is for setting aside impugned order dated 02.12.2019 (Annexure P-5) passed by learned Civil Judge (Junior Division), Jalandhar vide which application under Order 9 Rule 13 CPC filed by respondent No.2/defendant No.2 was allowed and judgment and decree dated 30.03.2018 was set aside.

2. Learned counsel for petitioner contends that decree of possession was passed in favour of plaintiff/petitioner on 30.03.2018 and the said suit was contested by the owner of the property, namely, Puran Singh and during the pendency of the suit, defendant No.2, Brij Mohan Gupta was also impleaded as defendant, who appeared on his own to contest the application under Order XXXIX Rule 1 and 2 CPC, but subsequently he did not participate in the suit proceedings and was proceeded against *ex parte*.

2.1. Learned counsel for petitioner further submits that the decree dated 30.03.2018 was challenged by Puran Singh through Civil Revision bearing No.2681-2018 and the same was upheld. He further contends that thereafter, learned trial Court proceeded to set aside the decree on the application filed by respondent No.2-Brij Mohan Gupta by ignoring his conduct, as he failed to make out a case for setting aside the ex parte decree.

3. Learned counsel for the respondents strenuously opposes the revision petition and supports the impugned order and argue that same is based on correct findings.

4. I have heard learned counsel for parties and gone through the case file.

5. Order assailed herein is premised, *inter alia*, on the following reasoning:

“12.... It is pertinent to mention here that till 04.11.2016, notice of the main suit was never ordered to be issued to defendant no.2 (present applicant). There is nothing on record from which it could be infer that Sh.N.K.Aggarwal, Advocate ever represented or appeared on behalf of defendant no.2. The perusal of zimni order dated 27.03.2017 reveals that without issuance of any notice of main suit to defendant no.2, the case was adjourned for filing written statement on behalf of defendant no.2. Rather, in the zimni order dated 03.04.2017, the then CJJD Jalandhar has categorically mentioned that Sh.N.K.Aggarwal Advocate is appearing only on the behalf of defendant no.1 and none has appeared on behalf of defendant no.2 (present applicant) and on the same day, Ld. CJJD, Jalandhar proceeded defendant no.2 (present applicant) ex parte, without going through the fact that the notice of the main suit has never ordered to be issued to present applicant/defendant no.2. From the above mentioned facts and circumstances, it is apparent that the applicant was never served upon in the main suit and passing of exparte order dated 03.04.2017 was not legal one, particularly when, notice of the main suit was never ordered to be issued to defendant no.2/applicant. Thus nothing is further required to be mention here except the fact that order dated 03.04.2017, vide which the defendant no.2 was proceeded against exparte was against the principles of law. As such, on the face of it, Judgment and Decree dated 30.03.2018, passed against defendant no.2 is not

valid one and suffers from material defects and is liable to be set aside.

13.Ld. Counsel for the respondent argued that the applicant was aware about the pendency of the main suit because he had been appearing in the contempt proceedings before the court of Sh.Gagandeep Singh, the then CJJD, Jalandhar. I have heard and considered the arguments of Ld. Counsel for the respondent and I do not find any merits in the same. Because, firstly, it has already been discussed above that the present applicant/defendant no.2 was proceeded against ex parte in the main suit without issuance of notice to him. Secondly, though. present applicant had been appearing in the contempt proceedings then, the knowledge of the main suit to applicant cannot be presumed. Moreover, Ld. Counsel for the respondent failed to extract anything material from the applicant Brij Mohan with regard to his knowledge about the main suit despite of lengthy cross-examination. Thus, the arguments addressed by Ld.Counsel for the respondent are of no consequence, in the absence of any cogent evidence as to knowledge of the applicant in the main suit.

14. Accordingly, on the basis of discussion made above, it is clear that ex parte order dated 03.04.2017 and Judgment and decree dated 30.03.2018 passed against defendant no.2 is liable to be set aside. As such, issue no.1is decided in favour of applicant and against the respondent/plaintiff.

ISSUE NO.2

16.In the case in hand, the applicant has claimed that he came to know about the ex parte decree passed against him on dated 14.05.2018. This claim has been reiterated by the applicant in his affidavit which has been tendered in his examination in chief. The perusal of cross- examination of applicant provides that Ld. Counsel for the responder failed to extract anything material from the applicant Brij Mohan with regard to his knowledge about the main suit, despite of lengthy cross- examination. In these circumstances, this court has no hesitation conclude that applicant came to know about ex parte Judgment and decree passed against him on dated 14.05.2018Hence the said application is well within limitation. Accordingly, this issue is also decided in favour of applicant and against respondent.”

6. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

7. All the contentions raised in the instant petition have been duly considered and rejected by Learned Court below by giving sound and convincing reasons in the impugned order, more particularly in the part extracted above. I am inclined to agree with the view thereon taken by learned Court below.

8. There is thus no room for interference in the aforesaid valid reasons recorded by learned trial Court, with which I am in agreement.

9. No grounds are made out to interfere.

10. Revision petition is dismissed.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

19.05.2023

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No