

CR-5740-2005(O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5740-2005(O&M)

Date of decision:-11.4.2023

Chairman & Managing Director Peerless General Finance & Investment
Company Ltd. and another

...Petitioners

Versus

Ved Parkash and others

...Respondents

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

Present: Mr.Tara Chand Dhanwal, Advocate
for the petitioners.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 20.8.2004 passed by Civil Judge (Sr.Divn.), Kaithal vide which an application filed by defendants No.1 to 3, seeking setting aside of ex-parte judgment and decree dated 22.3.1999 in Civil Suit No.609 of 1998 titled as 'Ved Parkash Versus Chairman' had been dismissed as well as order dated 31.8.2005 passed by Additional District Judge, Kaithal vide which appeal against the said order had been rejected.

2. Briefly stated, facts of the case are that plaintiff Ved Parkash had brought a suit against defendants Chairman and Managing Director, Peerless General Finance and Investment Co. Ltd., Assistant Administratory Officer, Peerless General Finance and Investment Co. Ltd., Kurukshetra, Peerless General Finance and Investment Co. through the Managing Director, Calcutta and Karam Singh, an authorized agent of

defendant No.1 contending his mother Smt. Shanti Devi since dead had deposited Rs.2,502/- vide receipt dated 4.3.1994 bearing agents Code No.160/421/572 and office Code No.57 through defendant No.4 – Karam Singh, who happened to be an authorized agent of defendants in a ten years scheme for an endowment sum of Rs.70,000/- with interest; unfortunately Shanti Devi expired on 4.8.1994 due to snake bite and an FIR in that regard was also got registered with Police Station Siwan; the accidental death of Smt.Shanti Devi was intimated to defendant No.4 – Karam Singh, authorized agent of remaining defendants but amount of endowment was not released, giving rise to a cause of action to the plaintiffs to bring the suit for grant of mandatory injunction against the defendants.

3. On getting notice, Sh.S.K. Sharma, Advocate had put in appearance on behalf of defendant No.2, however, subsequently he absented from the Court and resultantly defendant No.2 was proceeded against ex-parte. Defendant No.4 had also put in appearance but he failed to pursue the case and was also proceeded against ex-parte. Defendants No.1 and 3 had not appeared despite service. Therefore, they too were proceeded against ex-parte.

4. After recording evidence, vide judgment dated 22.3.1999, the suit of the plaintiff was decreed issuing a mandatory injunction to the defendants to release amount of Rs.70,000/- as prayed for by the plaintiff. It was observed that the plaintiff shall be entitled to interest at the rate of 12% per annum from the date of institution of the suit till its realization.

5. The defendants No.1 and 3 had then filed an application for

setting aside of ex-parte judgment and decree contending that they came to know about the same on 19.11.1999 when they received copy of notice under Order 21 Rule 66 CPC from the Executing Court; the applicants/defendants had been proceeded against ex-parte for the reason that notices had been issued to them as per registered AD post, which had not been received back within one month and drawing presumption that defendants would have received the same, ex-parte order was passed against such applicants/defendants. According to the applicants, they had not received any registered letter and no alternate service in the form of munadi and publication was effected.

6. Notice of that application was given to respondent/plaintiff, who put in appearance and contested the application raising various legal objections, on merits contending that the applicants/defendants had appeared in this case and subsequently they absented; they had not filed the written statement despite availing of numerous opportunities, therefore they could not take advantage of their own wrong; further the application filed was quite belated. The respondent/plaintiff prayed for dismissal of the application.

7. On the pleadings of the parties, following issues were framed:

1. Whether the exparte judgment and decree dated 22.3.1999 is liable to be set aside on the grounds mentioned in the petition? OPA
2. Whether the application is not maintainable in view of pre-objection No.1? OPR.
3. Relief.

8. During the course of evidence of applicants, they examined Sh.Sunil Kumar, Assistant Marketing Officer, Peerless as AW1.

In rebuttal, the respondent/plaintiff tendered in evidence photocopy of acknowledgement as Ex.R1.

9. After hearing arguments, the trial Court decided issue No.1 against the applicants/defendants and in favour of the respondent/plaintiff, issue No.2 was decided against the respondent/plaintiff. Resultantly, vide order dated 20.8.2004, the application was dismissed.

10. Feeling aggrieved, such applicants/defendants had preferred an appeal before District Judge, Kaithal, which was assigned to Additional District Judge, Kaithal, who vide judgment dated 31.8.2005 had dismissed the same, leaving the defendants No.1 and 3 aggrieved, who have preferred the present revision petition, notice of which had been issued to respondent No.1 but such respondent has not appeared despite service.

11. I have heard learned counsel for the petitioners besides going through the record.

12. Both the Courts below on proper appraisal and appreciation of evidence and correct interpretation of law have come to the same conclusion that applicants/defendants No.1 and 3 were properly served but despite that they did not put in appearance in the Court and were rightly proceeded against ex-parte. While coming to the conclusion, the Courts below have taken into view the fact that Chairman and Managing Director Peerless General Finance and Investment Co.Ltd. was impleaded as defendant No.1 and Peerless General Finance and Investment Co.

through the Managing Director C/o Peerless Bhawan was impleaded as defendant No.3; Karam Singh, authorized agent as defendant No.4. Defendant No.2 Assistant Administrative Officer Peerless General Finance and Investment Co. Ltd. Kurukshetra had appeared through counsel but subsequently absented. Defendant No.2 is none-else but an officer in employment of defendants No.1 and 3. It does not appeal to reason that defendant No.2 and 4 would not have informed such defendants No.1 and 3 regarding the civil suit in question filed by plaintiff Ved Parkash pending before Civil Judge (Sr.Divn.), Kaithal. Even otherwise, presumption under Order 5 Rule 19-A CPC was properly drawn by the Court and another fact which was considered was that respondents had relied upon copy of acknowledgment Ex.R1 sent to defendants No.1 and 3 and it was received back duly signed and sealed. The version of the applicants/defendants that they were not duly served and came to know about the civil suit on getting notice of application under Order 21 Rule 66 CPC from the Executing Court was considered and rejected.

13. I find myself in agreement with the Courts below in reaching the conclusion that defendants No.1 and 3 had intentionally not put in appearance in the Court despite being duly served having knowledge of the pendency of the civil suit and they were rightly proceeded against ex-parte. There is no ground to set the clock back and set aside the ex-parte order and judgment so as to have a *de novo* trial, in the process allowing the applicants/defendants to prolong the proceedings, which have already got extended for several years.

14. The impugned judgment/order passed by the Courts below are quite detailed and well reasoned and those do not suffer from any illegality or infirmity and are not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned judgment/order by way of exercising the revisional jurisdiction.

15. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 28.3.2006 passed by this Court staying further proceedings before the Executing Court stands withdrawn.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

11.4.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No