

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
222 **CR-6611-2018 (O&M)**
Date of decision: 26.05.2023

Harbhajan Singh & Another

...Petitioner(s)

Vs.

Manjit Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kamaljit Singh Dhillon, Advocate
for the petitioners.

NIDHI GUPTA, J.

Present Revision Petition has been filed by defendants No.4 and 2 respectively, seeking setting aside of order dated 28.07.2016 (Annexure P3) passed by learned Civil Judge (Junior Division), Jalandhar whereby application filed by the defendant No.4/petitioner No.1 herein under Order 9 Rule 13 Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") for setting aside ex parte order dated 03.11.2006, and ex parte judgment and decree dated 08.05.2008 passed in Civil Suit No.656/2006, has been dismissed. Challenge in the present revision petition is also to impugned order dated 10.05.2018 (Annexure P4), whereby the petitioners' appeal against above said order dated 28.07.2016 has also been dismissed by the learned Additional District Judge, Jalandhar.

2. It is vehemently submitted by learned counsel for the petitioners that the petitioners came to know about the ex-parte judgment and decree dated 08.05.2008 when they received summons on 08.10.2013

in execution petition filed by respondents/decreed holders. Immediately thereafter, the petitioners filed present application on 06.11.2013. It is submitted that therefore, the said application was wrongly dismissed by learned trial Court vide impugned order dated 28.07.2016; and even the appeal filed by the petitioners against the same was dismissed by learned Additional District Judge vide impugned order dated 10.05.2018 without correctly, appreciating the facts. Accordingly, the impugned orders be set aside.

3. No other argument is raised on behalf of the petitioners.

4. I have heard learned counsel for the petitioners.

5. Perusal of record of the case shows that in Civil Suit No.656 of 2006, petitioners were proceeded against ex parte on 03.11.2006. However, thereafter, the petitioners had engaged another counsel to represent them who had appeared on behalf of the petitioners in the trial Court on 07.05.2007. It has been submitted on behalf of the petitioners before the Courts below that the petitioners did not attend to the proceedings in the Civil Suit as a compromise was effected between the parties. And as per the said compromise, the respondents/plaintiffs had undertaken to withdraw the Suit and as such the petitioners and their counsel did not appear in the suit at hand. It has been further stated that however, the plaintiffs played a fraud with the petitioners and kept on pursuing the case despite the compromise and therefore, succeeded in obtaining ex parte decree dated 08.05.2008.

6. However, the said story put forth by the petitioners on the face of it does not sound plausible as it is hard to believe that the petitioners or their newly engaged counsel will not pursue the litigation to its logical end. Moreover, no such compromise as purported to have been entered into between the parties has been placed on record by the petitioners. Even no details, such as date, time, place, in respect of the alleged compromise have been provided. In fact, except for the bald averment on part of the petitioners, there is nothing whatsoever on record to indicate that a compromise was entered into between the parties.

7. Another glaring anomaly on the record of the case is that the application (Annexure P-2) under Order 9 Rule 13 CPC filed by the petitioner No.1 before the learned trial Court indicates that in para 7 thereof a whole different story has been pleaded by the petitioner. In the said application, ground cited for setting aside, ex-parte order is as follows:—

“7. That the applicant came to know about the ex-party decree on 4.1.2014, when the brother of the applicant told this fact to the applicant.”

8. It is, therefore, clear, that the petitioners have not approached this Court with clean hands and have sought to mislead the Courts.

9. Order 9 Rule 13 CPC stipulates as follows:

“In any case in which a decree is passed exparte against a defendant, he may apply to the Court by

which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it things fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim."

10. In my considered view, by no stretch of the imagination can it be said that the case of the petitioners falls within the parameters as set forth by the above provision.

11. The following observations and findings of the learned Lower Appellate Court as recorded in impugned order dated 10.05.2018 (Annexure P-4), are also relevant and are reproduced here in below: –

"11. Appellant/applicant/defendant Harbhajan Singh filed application under Order 9 Rule 13 CPC for setting aside the ex-parte Judgment and Decree dated 08.05.2008 passed in Civil Suit No.656/2006, instituted on 03.05.2003 against him and others on the ground that he could not appear in the said case as a compromise has been effected between the parties and the plaintiff undertook to withdraw the suit. Admittedly

appellant/applicant/defendant appeared in the said civil suit through his counsel as pleaded by him in Para No.2 of the application itself as well as in his statement on oath in the affidavit form Ex.AW1/A. No iota of evidence except his bald statement regarding the compromise effected between the parties has been produced on the file by the appellant/defendant. No date, month or year on which the alleged compromise effected between the parties has been either pleaded or proved by the appellant/applicant/defendant. No copy of any written compromise effected between the parties has been produced on the file by the appellant/applicant/defendant. Even no certified copy of ex-parte judgment and decree dated 08.05.2008 passed in the above said civil suit No.656/2006 has been produced on file by the appellant/applicant/defendant. Thus, when no cogent evidence regarding the compromise effected between the parties due to which appellant/applicant/defendant did not appear in Civil Suit No.656/2006 thereafter has been produced on the file, then it cannot be said that there are sufficient grounds to set aside the ex-parte decree passed against the appellant/applicant/defendant Harbhajan Singh. Piara Singh under whose signatures the present appeal has been filed by impleading him as appellant no.1 has not filed application for setting aside ex-parte judgment and decree dated 08.05.2008 under order 9 Rule 13 CPC before the court below as the said application was filed by Harbhajan Singh appellant/applicant/defendant no.4 as is apparent from the application under order 9 Rule 13 CPC moved before the learned court below. Piara Singh has not filed the present appeal on behalf of appellant/applicant Harbhajan Singh as

his attorney. So, appeal filed by appellant/applicant/defendant Piara Singh against the order dated 28.07.2016 is not maintainable.

12. According to Article 123 of Limitation Act 1963, period of limitation to set aside a decree passed ex-parte is 30 days from the date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree. Since the appellant/applicant/defendant was admittedly appeared in Civil Suit No.656/2006 before the learned court below and thereafter he has engaged another advocate who appeared on his behalf before the learned court below on 07.05.2007 as admitted by applicant Harbhajan Singh himself in his application as well as in his statement on oath, then it cannot be said that appellant/applicant/defendant was not duly served in the said civil suit. Hence, the period of limitation for filing an application to set aside the ex-parte decree in the present case by the appellant/applicant/defendant is 30 days from the date of decree. Thus, appellant/applicant/defendant was required to file application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 08.05.2008 passed against him in Civil Suit No.656/2006 on or before 08.06.2008, but he has filed the said application on 06.11.2013 i.e. after a period of about 5 V years from the date of decree which is hopelessly time barred. No application to condone the delay in filing the said application was filed by the appellant/applicant/defendant along with application under Order 9 Rule 13 CPC. Hence, the learned court below has rightly and legally dismissed the application moved by the appellant/applicant/defendant under order 9 Rule 13 CPC for setting aside the ex-parte judgment and

decree dated 08.05.2008 as well as order dated 03.11.2006, whereby he was proceeded against ex-parte in Civil Suit No.656/2006 titled as Manjit Kaur and others Vs. Charan Singh and others.”

12. I am in complete concurrence with the above said findings of the learned Court below. No ground is made out to interfere in the impugned orders. Present Revision Petition accordingly stands, **dismissed.**

13. Pending application(s) if any also stand(s) disposed of.

26.05.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No