

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

CR-830-2018 (O&M)

Date of Decision: 18.01.2023

M/s Suraj Construction Company

....Petitioner

Versus

M/s Aggcon Construction International (P) Ltd.Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.Rajive Sharma, Advocate
for the petitioner.

Mr. Ashok K. Jindal, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside appellate order dated 03.11.2017 (Annexure P-7) passed by learned Additional District Judge, Faridabad, affirming an order dated 23.12.2016 (Annexure P-5) passed by learned Civil Judge (Senior Division), Faridabad, whereby an application under Order 9 Rule 13 CPC for setting aside *exparte* order dated 09.12.2008 (Annexure P-2) and *exparte* judgment and decree dated 28.09.2010 (Annexure P-3) rendered by learned Additional Civil Judge (Senior Division), Faridabad, was dismissed.

2. Having heard the rival contention of learned counsel for the parties, no interference is called for in the impugned orders for the reasons recorded hereinafter.

2.1. Learned Trial Court has, in fact, almost conducted a parallel second trial to unearth the truth *qua* the claim of the defendant/petitioner-firm that it had no knowledge of the proceedings before the Court *qua* the recovery instituted against it as no service was effected. The findings *qua* the same, being apposite, are reproduced herein below:

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15. Thus, from the record which is present on case file, it surfaces that defendants had initially refused to appear in the court when a registered notice was received by them. It cannot be ignored that the report which is present on registered cover notice in the main civil suit, has not been got proved by the concerned postman or post office. However, there are circumstances which are proving that the defendant actually wanted to evade their presence in the court proceedings of this case. Said circumstances are being discussed in the coming paragraphs.

16. As DW-1, Satish Kumar, son of Giani Ram, deposed that in the main civil suit, defendant had never received any notice and that the defendant came to know about the pendency of these proceedings against them only in the last week of January, 2016 when the court staff contacted them for the purpose of execution petition. In cross examination, this witness deposed that he was a partner in the defendant firm which consisted of 9 partners. He admitted that Giani Ram was a partner in the defendant firm and he was residing in village Deva. He admitted that the vehicle which was attached, bearing registration number HR39A/6579, belonged to the defendant firm. He deposed in his statement that on 26/08/2015, for the 1st time, court bailiffs had met them and then they came to know about the pendency of civil suit against them. He deposed that Rajender Dalal, Manager, was an employee of defendant company for the last 4-5 years. He stated that all the 4 vehicles were in the possession of defendant company only. He does not know as to whether the vehicles have been attached or not. Then he admitted that Ghanshyam was their worker.

17. DW-2 is Ghanshyam, Supervisor of defendant company. He also admitted that Rajesh Dalal was the manager of defendant firm. He admitted his signature on the report of warrant of attachment as Ex DH-1. He stated that he had appended his signatures at the instance of Rajesh Dalal who had told him that it was a court notice.

18. From a bare perusal of the testimonies of these witnesses, it is clear that on 26/08/2015 itself, the defendant company had come to know that the proceedings of a civil case were pending against them. Then on 17/12/2015, the vehicles of defendant company were actually attached in furtherance of warrant of attachment. However, neither in the month of August 2015, nor in December 2015, any action was taken by defendants to enquire into the proceedings which were pending against them. In a very casual manner, present application for setting aside ex parte order dated 09/12/2008 and ex parte judgment dated 28/09/2010 was filed on behalf of defendant in the court on 04/02/2016 and not before that.

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xxx”

2.2. In light of the aforesaid, the reasoning and finding rendered is thus based on the testimony of the defendant themselves. Perusal of the same would reveal that the defendant witnesses candidly admitted about having knowledge of the passing of the decree against them firstly, sometime in August, 2015 and then secondly in December, 2015. Notwithstanding, they approached the Ld. Trial Court by filing an application under Order 9 Rule 13 CPC only on 04.02.2016. No plausible reason for not doing the needful within a period of 30 days of the knowledge of the proceedings has come forth either from the pleadings or from the testimony of the witnesses of the defendant/petitioner.

2.3. Furthermore, there is another aspect of the matter, which cannot be lost sight of, i.e. service was also effected on the defendant at first instance when the suit proceedings were at the nascent stage after issuance of the notice. Same is borne out from the record and I have seen the service report and record of the Ld. Trial Court which was requisitioned vide previous Court order dated 07.02.2018.

2.4. *Per contra*, learned counsel for the petitioner argues that there are three addresses given in the memo of parties in the plaint. He submits that one of the addresses out of the two is an incorrect address. Since the service was effected on the incorrect address, there was no occasion for the petitioner (defendant) to respond to the summons of the Court which resulted in the Ld. Trial Court in recording its wrong findings *qua* the service and thus denying the petitioner's chance to defend itself.

2.5. The aforesaid argument of learned counsel for the petitioner also flies in the face of the service report basis whereof are two registered ADs sent on the correct addresses i.e. **(i)Village and Post Office Deva, District Hisar and (ii) # 125-126, Officer Colony, Azad Nagar, Rajgarh Road, Hisar**. From the registered AD which was indeed sent to the native village of one of the partners of the petitioner-firm, it does so give an impression that the petitioner firm was well aware of the proceedings instituted by the plaintiff/respondent and it was on this premise that despite having gone to the village address, as many as 4 times, a situation was contrived that it was returned each time with the report that the person was not available.

2.6. Be that as it may, even if the said village service is to be disbelieved, there is no justification coming forth *qua* the registered posts sent on the second address at Azad Nagar, Rajgarh Road, Hisar, wherein the postman has stated in so many words on 18.10.2008 '*leney se inkar*'. It would, therefore, be too far fetched to believe the stand taken by petitioner that on both the addresses, service was not effected. Reasons are not far to seek. Each time the postman went to village, the partner of the firm was not

available and on the other address, knowing that Registered AD had come from the Court, the petitioner firm deliberately refused to accept it. Thus, having knowledge of the court proceedings, was the reason to contrive a situation of not accepting the Registered AD on either of the correct addresses i.e. one is not available multiple times and second is express refusal.

3. In the parting, I may hasten to add that while filing the revision petition the prayer has also been made to set aside the judgment and decree passed way back in the year 2010 without discussing any merits thereof. Such a prayer cannot be entertained under the revisional jurisdiction. It was open to the petitioner to challenge the judgment and decree on merits by taking appropriate remedy by filing the first appeal. There is no ground to interfere in the same under revisional jurisdiction on that score. It appears that the petitioner has chosen not to file an appeal against the judgment and decree dated 28.09.2010 (Annexure P-3) merely as a dilatory tactic and has instead chosen to seek remedy against *ex parte* proceedings by just filing an application under Order 9 Rule 13 CPC.

4. Be that as it may, there is no room for interference in the valid reasons recorded by the Ld. Courts below, with which I am in agreement.

5. Dismissed.

6. Pending applications shall also stand disposed of, accordingly.

(ARUN MONGA)
JUDGE

January 18, 2023
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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No