

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.277

Case No. : C.R. No. 840 of 2020

Date of Decision : August 28, 2023

Major Singh and others Petitioners

vs.

M/s Mohri Ram Charan Dass Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Peeush Gagneja, Advocate
for the petitioners.

Mr. Priyanshu Kamra, Advocate
for the respondent.

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GURBIR SINGH, J. :

1. Challenge in this revision petition is to the order dated 22.11.2018 (Annexure P-4), passed by learned Civil Judge (Junior Division), Abohar, whereby the application of the petitioners, filed under Order 9 Rule 13 CPC, has been dismissed. Further challenge is to the order dated 10.12.2019 (Annexure P-5), passed by learned Additional District Judge, Fazilka, whereby the appeal filed by the petitioners against the aforesaid order has been dismissed.

2. The brief facts, culled out from the paper book, are that the respondent-plaintiff filed a suit for recovery. The same was decreed ex-parte vide judgment and decree dated 22.02.2014 (Annexure P-1). Respondent filed the execution for recovery of the decretal amount against the petitioners-judgment debtors. The petitioners, on coming to know about

passing of ex-parte decree, moved an application under Order 9 Rule 13 CPC (Annexure P-2) for setting aside the judgment and decree dated 22.02.2014. Respondent-plaintiff contested the application. Issues were framed on the basis of pleadings of the parties. The parties were allowed to lead the evidence. Vide impugned order dated 22.11.2018 (Annexure P-4), the said application was dismissed. The petitioners filed an appeal against the said order, which was also dismissed vide judgment dated 10.12.2019 (Annexure P-5).

3. Learned counsel for the petitioners has argued that the petitioners-defendants were not having any knowledge regarding filing of the suit. They were not served in any manner. In the suit, wrong address of petitioners-defendants was mentioned as “Dhani Kandu Khera”, whereas their correct address was “Dhani Teliann Wali, Village Kandu Khera”. Both the villages are separate from each other, have different Panchayats and there is a difference of approximately six kilometers between both the villages.

4. It has further been contended that the learned Courts below have failed to take into consideration Ration Card (Ex.A-1), Aadhar Card (Ex.A-2) and Voter List (Mark-A). Chowkidar of Village Kandu Khera was examined by the petitioners as AW-2, who made statement that he was Chowkidar of both the villages and the Process Server of the Court never met him for the service of the petitioners-defendants. Therefore, judgments of the Courts below deserve to be set aside.

5. Learned counsel for the respondent, at the outset, has argued that the application in question has been filed on the wrong facts and

therefore, deserves to be set aside. He has further contended that the petitioners appeared before the Executing Court on 27.04.2016 through Advocate, who filed 'Memo of Appearance' on behalf of the petitioners, whereas application for setting aside the ex-parte decree was moved on 30.05.2016 on the ground that the petitioners came to know about the ex-parte judgment and decree only on the previous day of filing the application which means that as per pleadings, petitioners came to know about the passing of ex-parte decree only on 29.05.2016, whereas their counsel had already appeared on 27.04.2016, on their behalf, before the Executing Court. The application was filed beyond 30 days of having knowledge of passing of ex-parte decree. So, certainly the application is barred by limitation and is so rightly held by the learned Courts below. Thus, the learned Courts below have rightly dismissed the application of the petitioners and appeal filed by them.

6. I have heard the submission of learned counsel for the parties and also perused the case file.

7. In the application (Annexure P-2), it is pleaded that the applicants came to know about the ex-parte judgment and decree when the respondent-plaintiff told the applicants on the previous day that he had obtained ex-parte decree against the applicants, whereas in the judgment passed by the Trial Court, it is clearly mentioned that in the Execution Application filed by the respondent-plaintiff, in pursuance of the notices issued, the petitioners-defendants appeared through their counsel namely Shri S. S. Jammu on 27.04.2016, who filed "Memo of Appearance" on behalf of the petitioners. As per provisions of Article 123 of the Limitation

Act, 1963, the application for setting aside the ex-parte judgment and decree can be filed within 30 days from the date of knowledge. The application has certainly been filed after more than 30 days of coming to know about passing of ex-parte judgment and decree. So, the application is barred by law of limitation. It has also been rightly held by the Courts below that the application in question has been filed apparently on the wrong fact that the petitioners came to know only on the previous day of filing the application about the passing of ex-parte judgment and decree.

8. In view of the above discussion, I find no merit in the present revision petition and the same is accordingly dismissed.

9. Pending applications, if any, shall stand disposed of along with this judgment.

August 28, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.