

2023:PHHC:099643

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

**SAO-15-2019 (O&M)**

Date of decision: 01.08.2023

Sunil Kumar

..Appellant

Versus

Palwinder Pal

.Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Anil Kumar Aggarwal, Advocate for the appellant

Mr. Deepak Arora, Advocate for the respondent

**ANIL KSHETARPAL, J (Oral)**

1. The appellant's application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908, has been dismissed by the trial court, which, in appeal, has been affirmed by the Additional District Judge.

2. Some relevant facts are required to be noticed, in order to comprehend the issue, which needs adjudication. A suit for the recovery of Rs.4,93,683/- was filed. The appellant (defendant before the trial court) entered appearance through his counsel. The learned counsel appeared before the trial court on various dates of hearing. However, on 25.01.2011, neither the appellant nor his counsel was present, resulting in an order passed by the court to proceed against him ex-parte. Ultimately, the suit was decided on 24.04.2012 while passing a decree of Rs.2,60,360/-. An application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') to set aside the ex-parte judgment and decree was filed on 26.05.2012. The appellant claimed that he had no knowledge about the ex-parte judgment. Both the courts have dismissed the application while disbelieving the appellant.

The correctness of the aforesaid orders has been challenged in this appeal.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. Learned counsel representing the appellant submits that at the relevant time, the appellant was busy before the Company Law Tribunal and hence, he could not appear before the court. He submits that for the fault of the counsel, the appellant should not be punished.

4. This Court has considered the submission. It is evident that the appellant had continued to appear in the suit on various dates of hearing. On 25.01.2011, neither the appellant nor his counsel appeared, resulting in passing an order of proceeding ex-parte against the appellant. Thereafter, the appellant never took any steps till 26.05.2012 i.e for a period of one year and 4 months. The appellant had the knowledge of the pendency of the suit. In such circumstances, the courts below, on preponderance of probabilities, have come to a conclusion. Hence, no ground to interfere is made out.

5. Dismissed.

6. The amount of Rs.2,60,000/- deposited pursuant to the direction of the Court shall be remitted to the Executing Court for further orders.

7. All the pending miscellaneous applications, if any, are also disposed of.

01.08.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)  
JUDGE