

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 2138 of 2019****Date of Decision: 23.08.2023**

Chandgi Ram (Now Deceased) through his Legal Representatives

... Petitioner(s)

Versus

M/s Jeet Ram Satpal

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. R.K.Agnihotri, Advocate
for the petitioner(s).Mr. Vikram Singh and Mr. Abhinav Sood, Advocates
for the respondent.**Anil Kshetarpal, J.**

1. A highly hyper-technical view has been taken by both the Courts below while refusing to set aside the *ex parte* decree for the recovery of the amount forcing the petitioners (legal representatives of the defendant late Sh.Chandgi Ram) to file this revision petition.

2. In order to comprehend the issue, which requires adjudication in this case, the relevant facts, in brief, are required to be noticed. The respondent/commission agent filed a suit for the recovery of ₹19,40,271/- against late Sh. Chandgi Ram, a Farmer. Pursuant to the court notice, late Sh.Chandgi Ram appeared to contest the suit and filed the written statement. On 24.10.2011, late Sh.Chandgi Ram was proceeded against *ex parte* as the learned counsel representing him did not appear. It has come in evidence that late Sh.Chandgi Ram died on 12.01.2012 i.e. after a period of 1½ month

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from the date he was proceeded against *ex parte*. The *ex parte* judgment and decree for recovery of the amount was passed on 22.04.2013 without impleading the legal representatives of late Sh.Chandgi Ram as this fact was never brought to the notice of the trial Court. The decree holder has filed the execution petition against late Sh.Chandgi Ram. When the summons were sent to him, the Process Server reported that he has died. At that stage, the legal representatives of late Sh. Chandgi Ram filed an application under Order XI rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) to set aside the *ex parte* decree and they also filed the objections in the execution petition. It was asserted by the legal representatives of late Sh.Chandgi Ram that he was suffering from lung cancer and he was under the rigorous treatment from the Post Graduate Institute of Medical Education and Research at Chandigarh (hereinafter referred to as “PGIMER”). However, the trial Court as well as the First Appellate Court dismissed the application and assailing the correctness of said order the petitioners have filed the present revision petition.

3. From the perusal of the order passed by the First Appellate Court, it is evident that the Court has presumed that the petitioners being the sons of late Sh.Chandgi Ram, were having the knowledge of the pending suit as they were residing in the same house along with late Sh.Chandgi Ram.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

5. Though, the learned counsel representing the respondent submits that the petitioners have failed to produce sufficient material to

prove that late Sh.Chandgi Ram was suffering from lung cancer, however, in this Court, the document (Annexure P12) has been produced which proves that in the month of November, 2018, late Sh.Chandgi Ram was under the treatment from the Lung Cancer Clinic, Department of Pulmonary Medicine, PGIMER at Chandigarh. While filing the application for setting aside the *ex parte* decree, the petitioners have asserted this fact which is supported by their affidavit. As already noticed, late Sh.Chandgi Ram died within a period of 1½ month from the date he was proceeded against *ex parte*. In these circumstances, the Courts should have taken a holistic view of the matter. The Courts are required to have a pragmatic approach while deciding such applications. It is well settled principle that the rules of procedure are the handmaids of justice. The First Appellate Court has erred in assuming that the children of late Sh.Chandgi Ram had the knowledge of the pending suit. The expression “knowledge” is required to be interpreted to mean the complete and substantive knowledge of the pending suit, the stage at which it is pending, the name of the Court and the next date of hearing. Reliance in this regard can be placed upon the judgment of the Supreme Court in ***Panna Lal vs. Murari Lal (dead) by LRs, AIR 1967 Supreme Court 1384***. The relevant discussion made therein reads as under:-

“(4) *In Pundlick Rowji v. Vasantrao Madhav- rao, (1909) 11 Bom LR 1296 Davar, J., held that the expression "knowledge of the decree" in Art. 164 means knowledge not of a decree but of the particular decree which is sought to be set aside, a certain and clear perception of the fact that the particular decree had been passed against him. On the facts of that case, Davar, J.,*

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held that a notice to the defendant that a decree had been passed against him in the High Court suit No. 411 of 1909 in favour of one Pundlick Rowji with whom he had no dealings was not sufficient to impute to him clear knowledge of the decree in the absence of any information that the decree had been passed in favour of Pundlick Rowji as the assignee of a promissory note which he had executed in favour of another party. This case was followed by the Calcutta High Court in Kumud Nath Roy Chowdhury v. Jotindra Nath Chowdhury, (1911) ILR 38 Cal 394 at p. 403. In Bapurao Sitaram Karmarkar v. Sadbu Bhiva Gholap, ILR 47 Bom 485: (AIR 1923 Bom 193) the Bombay High Court held that the evidence of two persons who had been asked by the plaintiff to tell the defendant about the decree and to settle the matter was not sufficient to impose knowledge of the decree on the defendant within the meaning of Art. 164. C. J., said: Macleod,

"We think the words of the article mean something more than mere knowledge that a decree had been passed in some suit in some Court against the applicant. We think it means that the applicant must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been passed to against him in a particular Court in favour of a particular person for a particular sum. A judgment-debtor is not in such a favourable position as he used to

be when he had thirty days from the time when execution was levied against him. But we do not think that the Legislature meant to go to the other extreme by laying down that time began to run from the time the judgment-debtor might have received some vague information that a decree had been passed against him."

This decision was followed in Batulan v. S. K. Dwivedi, (1954) ILR 33 Pat 1025 at pp. 1050-8 and other cases. We agree that the expression "knowledge of the decree" in Art. 164 means knowledge of the particular decree which is sought to be set aside. When the summons was not duly served, limitation under Art. 164 does not start running against the defendant because he has received some vague information that some decree has been passed against him. It is a question of fact in each case whether the information conveyed to the defendant is sufficient to impute to him knowledge of the decree within the meaning of Art. 164. The test of the sufficiency is not what the information would mean to a stranger, but what it meant to the defendant in the light of his previous dealings with the plaintiff and the facts and circumstances known to him. If from the information conveyed to him the defendant has knowledge of the decree sought to be set aside, time begins to run against him under Art. 164.. It is not necessary that a copy of the decree should be served on the defendant. It is sufficient that the defendant has knowledge of the material facts concerning the decree, so that

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he has a clear perception of the injury suffered by him and can take effective steps to set aside the decree.”

6. In view the aforesaid facts, the First Appellate Court has committed an error while refusing to set aside the *ex parte* decree.

7. Keeping in view the aforesaid peculiar facts and discussion, the revision petition is allowed. The application filed by the petitioner to set aside the *ex parte* judgment and decree dated 22.04.2013 is allowed. The *ex parte* judgment and decree dated 22.04.2013 is set aside. The learned counsel representing the respondent (plaintiff) submits that the Court of first instance should be directed to decide the suit, expeditiously.

8. In view of the above, the Court of first instance is directed to make sincere endeavours for the expeditious disposal of the suit after granting the effective opportunities to the parties to lead their respective evidence. The parties, through their learned counsel, are directed to appear before the trial Court on 22.09.2023.

(Anil Kshetarpal)
Judge

August 23, 2023

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No