

CR-5457 of 2019

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

CR-5457 of 2019

Reserved on: 21.09.2023

Pronounced on: 04.10.2023

Kesar Dass

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Mohd. Yousaf, Advocate,
for the petitioner.

Mr. P.S. Bajwa, Addl. A.G., Punjab.

NAMIT KUMAR, J.

1. Instant revision petition has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 06.10.2016 (Annexure P-8) passed by the Court of learned Additional Civil Judge (Senior Division), Payal, whereby application filed by the respondents under Section 5 of the Limitation Act has been allowed and the order dated 09.07.2019 (Annexure P-11) whereby application filed by the respondents under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree has been allowed.
2. Brief facts leading to the filing of the present revision petition are that petitioner/plaintiff/decreed-holder filed a suit for declaration to the effect that he along with defendants No.3 to 8 is

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owner in possession of the land measuring 12 kanals comprised in khewat Nos.237, 238, 239 and 241 as per jamabandi for the year 1979-80, situated in village Nanakpur Jagera, Tehsil Payal, District Ludhiana; for declaration that deletion of names of plaintiff and defendants No.3 to 8 from the column of ownership in the revenue record qua the abovesaid land by respondents/defendants No.1 and 2 is illegal, null and void by declaring plaintiffs and defendants No.3 to 8 to be owners and in possession of land measuring 12 kanals out of the land comprised in khasrs Nos.3//16/1/1, 16/1/3, 17/2/2, 23/2, 24/2, 25/1, 27, 9//3/2, 4/1, khewat No.352, khatauni No.373, khasra Nos.23//1/2, 2/1, 3/2, khewat No.349, khatauni No.370, khasra Nos.22/5/2, 6, 8/1, 13/2, 19/1, khewat No.350, khatauni No.371, khasra Nos.3/16/1/2, 17/2/1, 18/1, 23/1, 24, 9//1/2, 1/3, 2, 3/1, 9/1, 10/1, 11/1, khewat No.351, khatauni No.372, as per jamabandi for the year 2004-05, situated in village Nanakpura, Jagera Hadbast No.337, Tehsil Payal, District Ludhiana and for permanent injunction restraining defendants No.1 and 2 from dispossessing the plaintiff and defendants No.3 to 8 from the abovesaid land which is in their possession being owner of the same on the basis of oral and documentary evidence. Respondents were proceeded against *ex parte*. Thereafter, *ex parte* evidence was recorded and suit of the petitioner was decreed by the trial Court vide judgment and decree dated 09.05.2014. Thereafter, petitioner approached respondent No.2 for compliance of judgment and decree dated 09.05.2014. However, when the petitioner failed to get the judgment and decree dated 09.05.2014 implemented he filed CWP

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No.13597 of 2015 for issuance of directions to the respondents to enter the name of the petitioner in the column of ownership in view of judgment and decree dated 09.05.2014. The said writ petition was disposed of by this Court vide order dated 22.09.2015 with a direction to the authorities to proceed in accordance with law and pass appropriate order to update the revenue record keeping in view the judgment and decree dated 09.05.2014. Thereafter, respondents filed an application under Order 9 Rule 13 CPC for setting aside the judgment and decree dated 09.05.2014. Respondents also moved an application under Section 5 of the Limitation Act for condonation of delay in filing the application under Order 9 Rule 13 CPC. After hearing both the parties, learned Additional Civil Judge (Senior Division), Payal, allowed the application seeking condonation of delay vide order dated 06.10.2016 and application under Order 9 Rule 13 CPC vide order dated 09.07.2019.

3. Learned counsel for the petitioner contended that impugned orders passed by the Court below are based on surmises and conjectures. He further contended that application for setting aside judgment and decree dated 09.05.2014 was filed by the respondents after a delay of about three years without giving any reason for filing the application after such a huge delay. He further contended that the Court below have failed to appreciate that summons were served in the office of the respondents, thus they were duly served. He further contended that respondents are wilful defaulters and had wilfully and intentionally disobeyed process of law. He further contended that

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respondents had full knowledge of the pendency of the case but they deliberately and intentionally did not appear in the Court and refused to accept the summons on the false ground. He further contended that impugned orders being illegal and perverse are liable to be set aside.

4. On the other hand, learned State counsel supporting the impugned orders contended that the same are legal and perfectly valid. He further contended that respondents were not in the knowledge of the pendency of the suit against them. He contended that as soon as they came to know about the *ex parte* judgment and decree dated 09.05.2014, they immediately moved the application for setting aside the same along with an application seeking condonation of delay in filing the application for setting aside the *ex parte* judgment and decree, which have been rightly allowed vide impugned orders by the Court below.

5. I have heard learned counsel for the parties and perused the record.

6. Hon'ble Supreme Court in ***CRIMINAL APPEAL NO. 471 OF 2009 – Uma Nath Pandey and others v. State of U.T. and another decided on 16.03.2009*** has observed as under: -

“8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first

*limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of **Cooper v. Wandsworth Board of Works [(1863) 143 ER 414]**, the principle was thus stated:*

“Even God did not pass a sentence upon Adam, before he was called upon to make his defence. “Adam” says God, “where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat”.

7. Perusal of the record shows that summons issued to the office of Naib Tehsildar, Malaud, were received by Sewadar Kuldeep Singh, who was not an authorised person to receive the summons. The summons issued to the office of Deputy Commissioner, Ludhiana, were received back with the report of refusal as the same were not accompanied by a copy of the plaint. Thereafter the summons were sent to the respondents through registered post, which were not received back served or otherwise. The judgment and decree was

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passed on 09.05.2014 and respondents filed application for condonation of delay in filing the application for setting aside *ex parte* judgment and decree on 27.11.2014. The delay in filing the application was due to official procedure of moving file from one section to another section. Since valuable rights of the state are involved in the present case and as per principle of natural justice that no one should be condemned unheard, the applications filed by the respondents have rightly been allowed by the Court below.

8. The impugned orders passed by the Court below are quite detailed and well-reasoned and do not suffer from any illegality or infirmity and are not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

9. Finding no merit in the revision petition, the same stands dismissed.

10. Dismissed.

04.10.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No