

CR-14-2015 (O&M)

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2024:PHHC:000741

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

CR-14-2015 (O&M)

Date of decision: 01.01.2024

Reserved on : 21.09.2023

M/s Madhusudan Auto Ltd.

....Petitioner

Versus

M/s Vikas Metals

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Mansur Ali, Advocate for the petitioner

ANIL KSHETARPAL, J

1. In this revision petition, the petitioner (defendant in the suit) assails the correctness of the order passed by the trial court on 29th September, 2014, while dismissing the petitioner's application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') which, in appeal, has been affirmed by the First Appellate Court on 14th November, 2014. The respondent (the plaintiff) filed a suit for recovery of Rs.2,00,000/-. On 24th September, 2009, the suit was dismissed in default when defendant's counsel was present. On the application filed by the plaintiff under Order IX Rule 9 CPC, the notice was issued on three different occasions to the petitioner. On 2nd November, 2010 Sh. Praveen Gupta, Advocate, appeared on behalf of the petitioner and sought some time to file the reply. However on 17th March, 2011,

he pleaded no instructions. Thus, on 10.06.2011 the court ordered issuance of the notice to the petitioner. The petitioner through its official appeared and stated that he has no objection to the restoration of the suit. Accordingly, the trial court restored the suit. Thereafter, the case was adjourned to 1st August, 2011 for the plaintiff's evidence. On 1st August, 2011, the presence of the petitioner is recorded in the Court proceedings. Again, on 1st August, 2011, no evidence was led by the plaintiff. Hence, the case was adjourned to 3rd August, 2011, and on the said date no-one appeared for the petitioner and as such the suit was proceeded against ex-parte. Thereafter, the case was fixed for ex-parte evidence, which was recorded and the suit was decreed on 3rd, October, 2011. The petitioner filed an application to set aside the ex-parte proceedings as well as the decree passed by the court while alleging that someone impersonated the petitioner at the instance of the respondent on 10th June, 2011.

2. The trial court, after noticing the respondent to file a reply, culled out the following issues for adjudication:-

“1. Whether the applicant is entitled to relief of setting aside of exparte order dated 3.8.2011? OPA.

2. Whether the applicant is entitled to relief of setting aside of exparte judgment and decree dated 3.10.2011? OPA.

3. Whether the application is not maintainable in the present form? OPR.

4. Whether the application of the applicant is time barred? OPR.

5. Relief.”

3. Thereafter, the parties were directed to lead evidence to prove their part of the case. Both the courts, as noticed above, dismissed the petitioner's application to set aside the ex-parte decree.

4. Heard the learned counsel representing the petitioner at length and with his able assistance perused the paperbook.

5. Learned counsel representing the petitioner submits that the petitioner should have been granted an opportunity to contest the case and there is no evidence to prove that the summons for 10th June, 2011 were ever served on the petitioner.

6. This Court has considered the submissions made by the learned counsel representing the petitioner. The respondent has examined RW2 Sh.Bhoop Singh, the Process Server. He has deposed that on 27th April, 2011, the office issued summons to him for serving the same on the petitioner. He visited the office of the petitioner where he contacted the Security Guard who directed to go to the Human Resources Branch. When he went to the Human Resources Branch, he met Rakesh, who advised to him to meet the Security Supervisor, who is authorized to receive the summons and then he went to the Security Supervisor. The notice sent by the court was served on the Security Supervisor, who signed in his

notebook as a proof of the service of summons on the petitioner.

The court further held that the petitioner has failed to substantiate by leading evidence that someone impersonated him on 10th June, 2011.

7. Thus, both the courts have concluded that the petitioner had the knowledge of the pending proceedings and sufficient notice has been given to the petitioner to contest the case times and over again.

8. It may be noted here that the scope of interference in a revision petition is limited unless and until the petitioner draws attention of the Court to any perversity or substantive error in the impugned orders the interference at the stage of the revision petition otherwise is not appropriate. In this case, it is established that Sh.Bhoop Singh, the Process Server, served the notice to the Security Supervisor of the petitioner. As noticed, thereafter, the representatives of the petitioner and attended the Court's hearing not only on 10th June, 2011, but also on 1st August, 2011. The petitioner has not led any evidence to prove that there was any impersonation. Moreover, the application filed under Order IX Rule 13 CPC has been filed on 7th May 2012, whereas the period of limitation for filing such an application is 30 days from the date the ex-parte decree is passed, if the party has the knowledge of the pending proceedings. It is evident on perusal of the evidence that the petitioner had the knowledge of the pending proceedings.

9. Keeping in view the aforesaid facts and discussion, no

ground to interfere is made out.
10. Hence, dismissed accordingly.
11. All the pending miscellaneous applications, if any, are

also disposed of.

01.01.2024
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No