



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-2840-2023(O&M)

Date of Decision: August 05, 2024

Ajay Kumar and others

...Petitioners

Versus

Manjeet Kaur

...Respondent

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Vinod Gupta, Advocate  
for the petitioners.

Mr.Paramjeet Phor, Advocate  
for the respondent.

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**ARCHANA PURI, J.**

Challenge in the present revision petition is to the order dated 22.03.2023 passed by learned Civil Judge (Sr. Divn.), whereby, an application, filed at the instance of the petitioners, under Order 9 Rule 13 CPC, thereby, seeking setting aside of the ex-parte order dated 02.06.2017 and ex-parte judgment dated 18.07.2018 has been dismissed.

The facts germane, as culled out from the paperbook, are as follows:-

That, initially, respondent-Manjeet Kaur had filed a petition under Section 12 of Protection of Women from Domestic Violence Act. However, the respondents (petitioners herein) were proceeded against ex-parte and thereupon, after recording of the evidence, ex-parte judgment was passed on 18.07.2018.

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Feeling aggrieved by the aforesaid ex-parte order and judgment, the petitioners (who were respondents before learned trial Court) had filed an application under Order 9 Rule 13 CPC, for seeking setting aside of the ex-parte order dated 02.06.2017 as well as ex-parte judgment dated 18.07.2018.

In the application, it is asserted that during the pendency of the petition under Section 12 of Protection of Women from Domestic Violence Act, filed at the instance of Manjeet Kaur, the petitioners were proceeded against ex-parte on 02.06.2017. In fact, it is pleaded in the application by the petitioners that they could not make appearance before learned trial Court, as they had never received any summons/notice, in the said case, despite they being the permanent resident of village Manuvas, P.S. Bhirwati, Teshil Nuh, District Mewat. The serving report of the summons, if any, is false and frivolous. Consequently, ex-parte judgment was passed on 18.07.2018.

In fact, it is further pleaded that they had received summons of the execution petition of the aforesaid ex-parte judgment and then they contacted the counsel, who inspected the file on 24.11.2021 and they only came to know about the ex-parte and the consequent judgment, so passed. Further, also in the application, it is stated that the delay in inspection of file by counsel for the applicants-petitioners was due to the fact that wife of the counsel had fractured her left shoulder and the counsel was busy in taking care of her. The absence of the applicants-petitioners was not intentional and they want to contest the case. As such, they made a prayer for setting

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aside of the ex-parte order dated 02.06.2017 and ex-parte judgment dated 18.07.2018.

In reply, the respondent (who was petitioner before learned trial Court) had denied the averments made by the petitioners and asserted that petitioners were duly served in the said case and they intentionally did not make appearance and they were rightly proceeded against ex-parte. Also, it is asserted that FIR was got registered against Ajay Kumar and the said case titled as 'State of Ajay Kumar' under Sections 323, 406, 498A and 506 IPC, was also fixed in the same Court for 24.05.2018. Even, case under the Domestic Violence Act was listed for 24.05.2018 for hearing. Ajay Kumar was well aware of the pendency of both the cases and thus, the petitioners deliberately failed to make appearance. As such, no case is made for setting aside of the ex-parte order as well as judgment in question.

After hearing learned counsel for the parties, vide impugned order, learned trial Court dismissed the application under Order 9 Rule 13 CPC.

Feeling aggrieved by the impugned order, the present revision petition has been filed.

Learned counsel for the parties heard.

From the copies of the summons, which have been placed on record, it is evident that learned trial Court, during the pendency of the petition under Section 12 of Protection of Women from Domestic Violence Act, had issued summons to all the three petitioners, at the address i.e. village Manuvas, P.S. Bhirwati, Teshil Nuh, District Mewat. The summons

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were issued on 06.04.2017 and the next date fixed before the Court was 02.06.2017.

However, the serving report, vis-a-vis, the summons of Ajay Kumar reveals that the service was effected through Vinod Kumar (Uncle). Likewise, summons sent for service of Ram Kishan were also reported to have been got served through his cousin. However, name of the cousin was not mentioned. Similarly, report on the summons sent for the service of Rajni Devi @ Rajnesh, with the report of service, having effected through Vinod Kumar, brother-in-law. All the three serving reports were made by SI Balbir Singh, summons staff, Karnal.

In the light of the aforesaid reports made, it is categorically submitted by learned counsel for the petitioners that there is no relative by the name of Vinod Kumar. To so substantiate his assertion, learned counsel for the petitioners has placed on record, information received from Citizen Resource Department, copy whereof is Annexure P-4. It reveals about Ajay Kumar to be son of Ram Kishan and Rajnesh and Ram Kishan to be son of Budhi and Harbiro and Rajnesh to be daughter of Ramphal and Santi Devi. However, the service is alleged to have been effected through Vinod Kumar s/o Ramphal. He is not related to Ram Kishan in any case. Rather, on the reports of service of summons, no further particulars of said Vinod Kumar had been mentioned.

Besides the aforesaid, it has been erroneously mentioned by learned trial Court, in the impugned order, about the petitioners to be having knowledge regarding the pendency of Domestic Violence case and the



criminal case titled as ‘State vs. Ajay Kumar’ under Sections 323, 406, 498A and 506 IPC, was also pending on the same date. May be it so. It ipso facto does not amount to petitioners having knowledge of the case, in which they have been proceeded against ex-parte.

Also, further learned trial Court had observed that present application must be held to be time barred, solely, on the score of petitioners having active knowledge regarding pendency of D.V. Act case. This observation is also erroneous.

Beneficial reference is to made to Article 123, which is as herein given:-

| Description of application                                                                   | Period of limitation | Time from which period begins to run                                                                                       |
|----------------------------------------------------------------------------------------------|----------------------|----------------------------------------------------------------------------------------------------------------------------|
| 123. To set aside a decree passed ex parte or to re-hear an appeal decreed or heard ex parte | Thirty days          | The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree. |

From the aforesaid provision, it is evident that to seek setting side a decree passed ex-parte or re-hear an appeal decreed or heard ex-parte, the period of limitation is 30 days and this time shall begin to run from the date of the decree or where the summons or notice, was not duly served, when the applicant had knowledge of the decree. The term “**knowledge**” means a certain and clear perception of a fact. The expression “**knowledge of the decree**” in the Article means knowledge not of a decree, but of a particular decree, which is sought to be set aside.

It is evident that a mere knowledge of the fact that a decree has



been passed by some court against a person, is not sufficient. The limitation for filing an application for setting aside the ex-parte decree, is required to be calculated from the date, on which the applicant has knowledge of the fact that a particular decree has been passed against him, in a particular court, in favour of a particular person. Unless, the knowledge of the decree is complete, the period of limitation cannot begin to run. However, this aspect, for appraisal by learned trial Court, has been overlooked.

Considering the aforesaid fact situation, the submission made by learned counsel for the petitioners gives rise to triable issues. Consequently, it was required on the part of learned trial Court to frame an issue and provide an opportunity to the parties concerned, to leave evidence, with regard to submissions, about sufficient cause made, to set aside the ex-parte order and judgment, as pleaded.

In the light of the aforesaid observations, the revision petition is hereby allowed and the impugned order is set aside. The parties are directed to make appearance before learned trial/Successor Court on 09.09.2024. On appearance of the parties, learned Court concerned, shall frame issues, with regard to the application under Order 9 Rule 13 CPC and provide an opportunity to both the parties to lead respective evidence and thereafter, decide the application under Order 9 Rule 13 CPC, afresh.

August 05, 2024  
Vgulati

Whether speaking/reasoned  
Whether reportable

(ARCHANA PURI)  
JUDGE  
Yes  
Yes/No