

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****235****CR-2965-2019 (O&M)****Date of Decision : 19.11.2024**

Tek Chand

....Petitioner

VERSUS

Jaipal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sahil Sharma, Advocate for the petitioner.

Mr. Karan Kaushal, Advocate for respondent Nos.1 to 3.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed challenging the order dated 13.02.2014 passed by the Trial Court dismissing the application for setting aside the *ex parte* order dated 16.04.2008 and judgment and decree dated 10.03.2010 as well as order dated 01.07.2016 whereby the appeal filed against the order dated 13.02.2014 was also dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for declaration with consequential relief of partition. On 16.04.2008 the petitioner herein was proceeded against *ex parte* and thereafter on 10.03.2010 an *ex parte* decree was passed by the Trial Court. An application for setting aside the *ex parte* decree was filed on 12.02.2011. Meanwhile, the final decree was itself passed on 17.10.2016, where the petitioner herein had appeared through counsel. The said final decree has since attained finality as the petitioner has chosen not to

challenge the said decree. The application under Order IX Rule 13 of the Code of Civil Procedure, 1908 was dismissed by the Trial Court vide order dated 13.02.2014. Aggrieved by the same an appeal was preferred which appeal was dismissed on 01.07.2016. Thereafter, the plaintiff-respondent No.1 (decree-holder) filed an execution petition wherein the petitioner was represented through his counsel as is apparent from order dated 01.10.2018 (Annexure P-3). Though the appeal was dismissed on 01.07.2016, however, the petitioner was appearing before the Executing Court. No revision was filed till 07.05.2019.

3. Learned counsel for the petitioner would contend that the petitioner is an uneducated person and he was informed by his counsel that his case had been dismissed and that he was no longer required and thereafter the counsel died. It is further the contention that the clerk of the counsel had informed the petitioner that since the case itself was dismissed nothing more was required to be done and hence the Court erred in dismissing the application for setting aside the *ex parte* judgment and decree.

4. *Per contra* learned counsel for respondent Nos.1 to 3 would contend that the appeal was dismissed on 01.07.2016 and thereafter the petitioner herein appeared before the Executing Court as is apparent from the order dated 01.10.2018 (Annexure P-3) and chose not to challenge the order dated 01.07.2016 till 07.05.2019 when the present revision petition was filed. It is further the contention of learned counsel for respondent Nos.1 to 3 that in the interregnum the final decree has also been passed on

17.10.2016. At the time of passing of the final decree, the petitioner was duly represented by the counsel and has chosen not to challenge the final decree, which had been passed.

5. I have heard learned counsel for the parties.

6. In the present case the petitioner herein was proceeded against *ex parte* on 16.04.2008 and the *ex parte* judgment and decree was passed on 10.03.2010. The application was filed under Order IX Rule 13 CPC for setting aside the *ex parte* judgment and decree on 12.02.2011, which was dismissed by the Trial Court on 13.02.2014. The petitioner herein participated in the proceedings for passing of the final decree as is apparent from the decree dated 17.10.2016 (Annexure P-2). The appeal preferred by the petitioner herein against the dismissal of the application under Order IX Rule 13 CPC was dismissed vide order dated 01.07.2016. Despite the petitioner appearing before the Executing Court and being well aware of the dismissal of the appeal on 01.07.2016 he chose not to challenge the same till 07.05.2019 when the present revision petition was filed. There is no explanation forthcoming except what the learned counsel for the petitioner has argued that the petitioner was not aware of what was happening as he is an illiterate person. The said argument cannot be accepted as the petitioner had engaged a counsel before the Executing Court and was duly represented. Infact, objections were also filed by the petitioner herein and hence it does not lie in the mouth of the petitioner to now say that he was not aware of the dismissal of the appeal on 01.07.2016. Further still, having participated in the proceedings for passing of the final decree, the petitioner cannot now

take a stand that he was never aware of what was happening and hence could not file the revision earlier. Though no doubt there is no limitation for filing a revision petition, however, the laxity on the part of the petitioner shown in challenging the order dated 01.07.2016 itself shows that the entire exercise is nothing but an endeavour to delay the proceedings. Further still, in the proceedings under Order IX Rule 13 CPC, the petitioner had appeared and filed his affidavit in examination-in-chief as AW1. In his statement the petitioner clearly stated that he was regularly visiting his counsel and visited him till a year before the recording of the statement. It was further added by the petitioner that the counsel had died in 2009. Not an iota of evidence was led by the petitioner besides his own self-serving statement and that of his mother to show that the counsel had informed him that he was not required and that the case had been dismissed. Even the clerk of the counsel was not summoned by the petitioner to prove his case.

7. Keeping in view the totality of the circumstances as narrated above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.11.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO