



In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1391 of 2025

Date of Decision: 10.03.2025

Varsed Facility Management Services Private Limited

... Petitioner(s)

Versus

Manmachine India Private Limited

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ajay Kumar Gupta, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The petitioner was a defendant in a suit for recovery of ₹16,42,000/- which was decreed *ex parte* on 18.11.2014. An application filed by the petitioner to set aside the *ex parte* decree was dismissed by both the Courts below. The correctness of the concurrent orders is challenged in this revision petition.

2. The learned counsel representing the petitioner has made the following submissions:-

- I) The suit of the plaintiff was not maintainable.
- II) The defendant joined the proceedings on 31.08.2012 and participated in the proceedings. However, it was again proceeded against *ex parte* on 28.01.2014. The defendant, being the company, took all the possible steps to properly defend the suit. The delay should have been condoned by taking a liberal view.

3. This Court has considered the submissions of the learned counsel representing the petitioner.

4. In fact, the First Appellate Court, upon examining the record, has recorded the following findings:-

“13. It is a matter of record that on 03.04.2012 plaintiff (respondent herein) instituted suit for recovery of ₹16.42 lakhs alongwith stipulated interest and damages thereof, against the defendant (appellant herein) and notice was ordered to be served upon the defendant for 06.06.2012, but despite due service, none appeared on behalf of the defendant and defendant was proceeded against ex-parte vide order dated 06.06.2012 passed by the Court of learned ACJ(SD), Gurugram. Then the matter was adjourned to 13.06.2012 and then to 03.08.2012 and then to 29.08.2012 and then to 31.08.2012 and on 31.08.2012 defendant put in appearance through counsel and one application under Order 37 Rule 3(1) CPC read with Section 151 CPC was also moved on behalf of defendant and then in terms of Order 37 Rule 3(4) CPC, plaintiff was directed to serve summons on defendant in Form 4A in Appendix B and matter came to be adjourned to 22.10.2012 and then to 26.11.2012 and then to 05.01.2013 and then to 16.03.2013 on which date reply to the aforesaid application is reflected to have been filed. Then the matter was adjourned to 07.05.2013 and then to 19.11.2013 and then to 28.01.2014, but on 28.01.2014, none appeared on behalf of defendant and accordingly defendant was proceeded against ex-parte. Thereafter, matter was adjourned to 11.07.2014 and then to 18.08.2014 and thereafter, after obtaining ex-parte evidence, suit of the plaintiff was decreed ex-parte with costs vide judgment/decreed dated 18.11.2014. Accordingly, it comes out that defendant had due knowledge/notice of the pending civil suit instituted against it, however it failed to pursue the matter

for the reasons best known to it.”

5. It would be noticed that the defendant was given an opportunity to prove that it was having a sufficient cause for non-appearance. It examined AW.1 Pardeep Kumar and his evidence was recorded. The First Appellate Court has recorded the following observations after analyzing his evidence:-

“16.....First of all, it is nowhere mentioned in the application of the applicant/appellant as to when defendant contacted the counsel appearing on its behalf and as to when defendant met the Clerk of the counsel and as to when Clerk of said counsel informed about the dismissal of the suit and pleading to that effect in para No. 4 of the application is quite vague. Not only this, applicant/defendant examined AW1 Pardeep Kumar who tendered his affidavit Ex.AW1/A in evidence and reiterated the facts in his affidavit, as para No.5 of his Affidavit is reproduction of para No. 4 of the application and again no specifics as to when defendant met the Clerk of counsel and as to when said Clerk informed them about the dismissal of the suit, are spelt out. Moreover, cross-examination of this witness further reveal the falsity of the case set up by the applicant/defendant, as AW1/Pardeep Kumar in his crossexamination states that he contacted the counsel in November-December, 2013 and thereafter he never contacted the counsel and that he does not remember the name of the counsel. In his further cross-examination, he quite strangely states that he had no talk with the counsel in NovemberDecember, 2013 as at that time he could not contact the concerned counsel. He further states that in para No.5 of the affidavit, he has disclosed about meeting with the Clerk of the counsel but he did not meet the Clerk of the counsel and then voluntarily states that one Gopal Sharma had met him(Clerk of the counsel) and this much cross-examination of

witness of the applicant/defendant itself reveals a lot and it is apparent on record that applicant/defendant is trying to take a false plea, without any justification and basis. Further, it may not be out of context to mention here that ex-parte order was passed on 18.01.2014 and ex-parte decree was passed on 18.11.2014, however instant application has been moved after much delay i.e. on 19.04.2016 and in the light of afore-discussed evidence of the applicant/defendant itself, it is again apparent that instant application was moved just to frustrate the execution petition filed by decree-holder/plaintiff.”

6. In this case, admittedly, the defendant received summons sent by the Court. However, it failed to enter appearance, resulting into the Court ordering *ex parte* proceedings on 06.06.2012. Subsequently, the company appeared through its counsel on 31.08.2012, and continued to participate in the proceedings upto January, 2014. Again, it absented from the proceedings. The application for setting aside the *ex parte* decree was filed on 19.04.2016, but it failed to prove any sufficient cause for its absence from the proceedings of the Court.

7. With respect to the first submission, this Court, while deciding the revision petition, is not expected to permit the petitioner to take up a new point which was never taken up before the Courts below.

8. With regard to the second submission, it would be noticed that the petitioner (defendant) is a private limited company. It has all wherewithal, namely the employees and lawyers who can be engaged. The petitioner engaged a lawyer to continue to appear in the Court for nearly 1½ years. It is evident that AW.1 Pardeep Kumar has disclosed that he contacted the counsel in November/December, 2013, but thereafter, he failed to

9. It is evident that the petitioner was not serious in defending the suit as it was not pursued earnestly.
10. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent impugned orders passed by both the Courts below. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

March 10, 2025
“DK”

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