IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.6946 of 2012 (O&M)
Date of decision:31.10.2015

M/s Sagru Mall Parkash Nath ... Petitioner

versus

Darshan Singh .... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. D.K. Singal, Advocate,
for the petitioner.

Mr. Shamsher Singh Gill, Advocate,
for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The revision petition is against the order dismissing an application for setting aside the ex parte decree. The decree was passed after an attempt was made to serve the respondent in person, but finding him not there, service by affixture was reported to have been made on 19.03.2005. The affixture took place after two earlier failed attempts and on the last occasion, the defendant's representative in the shop was said to have been informed about the case and when he refused to accept service of the defendant, affixture was said to have been made.

2. The decree was put in execution and the defendant was served on 17.02.2007 and the application was filed for setting aside the ex parte decree on 20.04.2007 contending that the alleged affixture was not true and the service had not been effected in accordance with law.

3. The decree holder contended that he actually accompanied the court bailiff/process server for service and the affixture was done at the property identified by him but the process server stated that no one accompanied him at the time when he effected service by affixture. The court below did not make much of this discrepancy in evidence but found that the defendant surely knew about the institution of the suit and in the normal course ought to have known when his own employee had been informed at the shop. Consequently, it held that there was no justification in not even resorting to an application for setting aside within 30 days from the date when he alleged that he came to know about the decree at the execution stage. The court found that the service by affixture is one of the modes approved by law and held that there was no justification for setting aside the decree. The appellate court confirmed the same.

4. The learned counsel for the petitioner pleads for reversal pointing out to the discrepancy as regards the person who accompanied the process server and would also rely on the judgment

of the Supreme Court in ***Sushil Kumar Sabharwal Versus Gurpreet Singh-AIR 2002 (SC) 2370*** to state that even if the party is negligent, the panacea would be imposition of costs and the defendant ought to have an opportunity to contest the case on merits.

5. The counsel for the respondents is equally vehement in his position and would argue that a suit which was instituted in the year 2004 and the decree obtained in 2006 is stultified by a deliberate act on the part of the defendant in remaining ex parte and prolonging the case and not paying the amount due under the decree which is to the tune of ₹1,91,630/- with subsequent interest. The counsel would also refer me to the decision of the Supreme Court in ***Mahabir Singh Versus Subhash and others-2008(1) CCC 88 (SC)*** that laid down that the defendant, who moved an application to set aside the decree, was required to prove that summons had not been served or there was sufficient cause for remaining absent and, in this case, the inference and knowledge of the suit obtains by the fact that the person available at the shop had been informed about suit before affixture was done. The counsel would also argue, referring to the same judgment, that even if summons had not been served or there was a defect in service, there is a duty for the defendant to state when he came to know about the decree and if, in this case, any defect in service were to be noticed, the defendant having come to know about the decree with notice of execution on 17.02.2007 and it

was really the starting point of limitation. The petition was filed on 20.04.2007 and the counsel for the petitioner would try to downplay the delay of 32 days by stating that notice in execution will only give knowledge about the decree but the requisite details that have to be gathered and the time that may be necessary for engaging a counsel will also have to be realistically assessed and the delay which has been occasioned must be taken as duly explained and condoned.

6. There are as many decisions of the Supreme Court and of this court that allow for liberal construction of applications for setting aside the ex parte decree as there are decisions which have gone by the letter of law and not allowed for matters to be reopened if justification was not made. We have come by difficult times in courts with persistent pleas for adjournments or several dubious methods of allowing for ex parte orders to be passed only to come with applications for setting aside. The problem of huge pendency in a large measure is caused by the unwillingness to take the proceedings in court seriously. To many, the lack of care or diligence is rationalized by pointing out to the systemic failures and the court's own inability to dispose of cases quickly for several causes and hence, a party ought not to be seen as a only person contributing to delays. The discretion wherever was exercised, under the present circumstances, must be seen in the context where

there is likely to be a very serious prejudice if a contest on merit was not allowed. It is a suit by a farmer against a Commission Agent for recovery of money. To a farmer, the money was much more pressing need than a Commission Agent who perhaps has wads of currency. Between the two, I have no doubt in my mind that the defendant, who was trying to fend off the claim for recovery and stall the execution, had to show a greater sense of vigilance and due care. If that is absent from the fact that even on the own showing of the defendant that he did not move an application for setting aside the ex parte decree within time, I will not find that the discretion must be extended in favour of such a defendant. While the identity of a person could be a matter truly in doubt for a court officer making an effort to effect service, identifying a shop in a village ought not to be a major problem even for a stranger. The affixture has been made in a shop at the premise of the defendant and that was spoken to by the process server. The evidence that no one accompanied him was the most natural statement, for, the process server was not attempting to puff up his own act by artificially stating that the plaintiff was present. I would rely on a statement of the process server himself as surely justifying an inference that the defendant must have known about the affixation on the same date or immediately thereafter from local resources and if he was waiting for another 2 years till when the decree was put in execution, he was

literally finding an excuse not to join the proceedings and delay the process of recovery.

7. Although the counsel for the petitioner passionately argued that the delay could be compensated by imposition of costs, I will find that a money action need not further be delayed to the benefit of the defendant who has surely an axe to grind for not appearing in court and putting the decree holder through a long drawn litigation. If the two courts below have also found on factual consideration of the knowledge of the decree by the defendant and took a decision that the case did not deserve a trial on merits by setting aside the ex parte decree, I would let the matter rest there and will find no reason to invoke the jurisdiction under Article 227 for interference.

8. The revision petition is dismissed on the above terms.

(K.KANNAN)
JUDGE

31.10.2015
sanjeev