

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****129****CR-187-2025 (O&M)****Date of decision: 16.01.2025****Kulwant Rana & Another****...Petitioner(s)****Vs.****M/s East View Apartment Pvt. Ltd. & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Amit Kumar Goyal, Advocate
for the petitioners.

NIDHI GUPTA, J.

Present petition under Article 227 of the Constitution of India is filed by the defendants seeking exercise of extra ordinary supervisory jurisdiction of this Court for quashing the order dated 29.08.2024 (Annexure P/7) passed by the learned ADJ, Sonapat; and the order dated 04.11.2023 (Annexure P/5) passed by Ld. CJ (SD), Sonapat; whereby the application filed by the petitioners u/O 9 Rule 13 CPC for setting aside ex-parte judgment and decree dated 16.08.2016 has been dismissed. It is further prayed that the application may be allowed; and the ex-parte judgment dated 16.08.16 (Annexure P/4) and order dated 26.03.13 (Annexure P/2) may be set aside.

2. Learned counsel for the petitioners/defendants submits that the present Civil Suit could have been filed by the respondent/plaintiff only against the company M/s Saroj Buildwell & Construction Pvt. Ltd. Village Shahbad Daulatpur, Delhi; and not directly against the defendants. However, this aspect of the matter has not been considered by the learned



Courts below while decreeing the suit of the plaintiff. It is further submitted that the learned Courts below also failed to appreciate that the suit of the plaintiff is time barred by limitation on 07.10.2011 as the prescribed time limit to file recovery of any amount is 3 years from the day of payment and there is no provision to condone the delay in filing any suit. It is further pointed out that the judgment and decree were obtained by the plaintiff vide ex parte orders. However, the learned Courts below failed to appreciate that the petitioners were not served in accordance with law. As such, they were unable to join the Court proceedings. Therefore, the application of the petitioner under Order 9 Rule 13 CPC for setting aside ex parte judgment and decree, has been wrongly dismissed vide the impugned order. For this reason as well, the ex parte order dated 26.03.2013 and judgment and decree dated 16.08.2016 are liable to be set aside and the petitioners/defendants are liable to join the Court proceedings after filing written statement and leading their evidence and after that the case of the plaintiff is liable to be decided. It is submitted that the petitioners never came to know about the ex parte order dated 26.03.2013 or even the judgment and decree dated 16.08.2016 prior to the execution petitions. It is accordingly prayed that the impugned order be set aside. In support, learned counsel relies upon judgment of the Allahabad High Court in **“Dhanush Vir Singh Vs. Dr. Ila Sharma & 3 Others” Law Finder Doc ID # 2616133.**



3. No other argument is raised on behalf of the petitioners.

4. I have heard learned counsel for the petitioners and perused the case file in great detail.

5. Brief facts of the case are that the plaintiff/respondent No.1 had filed a suit for recovery against the defendants/petitioners and pro-forma respondent No.2 herein. As per the plaint, the defendants had approached the plaintiff claiming to be owners of the suit land and expressing desire to sell the suit land for a total sale consideration of Rs.2 crore 25 lakh. The said offer was accepted by the plaintiff; and of the total sale consideration of Rs.2 crore 25 lakhs, the plaintiff paid Rs.50 lakh by way of earnest money of which Rs.10 lakh was paid in cash and remaining amount of Rs.40 lakh was to be paid to the defendants through cheque No.422373 dated 01.07.2008 drawn on Indian Bank, New Delhi, Main Branch, New Delhi. It was further agreed between the parties that the balance sale consideration will be paid by the plaintiff to the defendants at the time of execution and registration of the Sale Deed. On the same day i.e. 01.07.2008 an agreement to sell was executed by the defendants after receiving the earnest money of Rs.50 lakh from the plaintiff. As per the terms and conditions of the agreement, the remaining balance sale consideration was to be paid at the time of the execution and registration of the sale deed, which was fixed for on or before 20.08.2008.



6. Due to non-registration of the Sale Deed on the stipulated date of 20.08.2008, the plaintiff served legal notice dated 28.07.2011 for executing the Sale Deed on 12.08.2011 and again on 12.08.2011 for 17.09.2011. However, the Sale Deed could not be registered. Thus, the plaintiff filed the present suit (Annexure P1) for recovery of ₹50 lakhs along with interest and damages, against the defendants on 07.10.2011.

7. Upon notice, the defendants failed to put in appearance. It is the contention of the petitioners that they could not appear in the suit as no notice was served upon them in the said Suit. However, the said contention of the defendants is borne out to be patently incorrect as, it has come on record that the defendants were duly served by the court through summons on 16.1.2012 and 7.3.2012 through one Yashpal Sharma, PA to the defendants. The said Yashpal was working on behalf of company at the site and he had closed his identity as an employee of defendant No.2. Said Yashpal had further refused to accept the summons. It is only after considering the report of the process server, that the court vide order dated 13.3.2012 directed for substituted service by way of publication, which was duly affected. Despite that, the defendant failed to put an appearance before the learned trial court. Accordingly, they were proceeded against ex parte vide order dated 26.03.2013 (Annexure P2). Subsequently vide judgment and decree dated



16.08.2016 (Annexure P3) on the basis of evidence led by the plaintiff-Company, the suit of the plaintiff was decreed ex-parte.

8. It is the case of the defendants that it is only during execution proceedings that the defendants discovered about the decree dated 16.08.2016. Accordingly, on 23.01.2023, the defendants had filed the present application under Order 9 Rule 7 & 13 CPC (Annexure P4) seeking recalling of the order dated 26.03.2013 (Annexure P2) and for setting aside the ex parte judgment and decree dated 16.08.2016. The plaintiff resisted the above said application of the defendants by filing reply and raising numerous objections including that the said application had been filed by the defendants only in order to avoid paying the decretal amount. In disposing of the said application, following issues were framed:-

“1. Whether the exparte order dated 26.3.2013 and exparte judgment and decree dated 16.8.2016 is liable to be set aside on the grounds as prayed for? OPA

2. Whether the applicants were not duly served with the summons? OPA

3. Whether the application for setting aside the exparte order dated 26.3.2013 and exparte judgment and decree dated 16.8.2016 is hopelessly barred by limitation? OPR

4. Whether the application of the applicant is not maintainable in the present form? OPR

5 Relief.”

9. Vide order dated 04.11.2023 (Annexure P5), the learned Civil Judge, Senior Division, Sonipat dismissed the said application



of the defendants. The findings of the learned Civil Judge, Senior Division, Sonipat as contained in Paras 16 and 17 of the order dated 4.11.2023, are important which read as under:-

“16. Furthermore, in the present case the exparte order was passed in the year 2013 and exparte judgment and decree was passed in the year 2016 whereas present application for setting aside exparte judgment and decree has been filed in the year 2023 i.e. after delay of approximately 10 years and 7 years from the date of passing of the order and the impugned decree. Even a notice was also issued to defendants of the execution petition preferred by the plaintiff/respondent and the summons issued in the execution petition are placed on record as Ex.R2 to Ex.R4, perusal of which reveals that said summons were duly received by one Suresh Rana on behalf of defendants Anita Rana and Kulwant Rana while stating him as nephew of the defendants. However, despite service of summons through nephew, none appeared on behalf of defendants and later on when the notice of sale was issued for 5.1.2023 it was received by sister-in-law of the defendants namely Sujata whereupon defendants appeared in the execution petition and preferred the present application to set aside exparte order and judgment and decree. The contention of applicant that he was never served personally and therefore, the order is liable to be set aside, is not legally sustainable as even till today no personal service has been effected upon the defendant still the defendants have appeared before the court and moved application for setting aside the impugned order and decree. Every time the summons are being received on behalf of defendants by one



or other member of the family or employee and the plea of the applicant is not acceptable that they had no knowledge of the suit till filing of the application. It is also worthwhile to mention here that nothing has been pleaded in the application regarding receipt of summons issued in execution petition by nephew of applicants Suresh Rana. There is inordinate long delay at the instance of applicants in moving application under Order 9 Rule 13 CPC and in such circumstances the applicants must give a reasonable explanation showing the justifiable cause failing which the ex parte decree cannot be set aside legally. The applicants have failed to show that summons were not duly served upon them nor it is their case that there was sufficient cause which prevented them from appearing in court. Therefore, these issues are decided against applicant and in favour of plaintiff/respondent.

Issue No.3:-

17. The onus to prove these issues was on the defendants and in view of my findings returned on issues No.1 & 2, the court is of the considered opinion that the applicant had the knowledge of the ex parte order and judgment and decree before the date of knowledge as claimed and the application has not been moved within period of limitation. Therefore, the application is barred by limitation and this issue is also decided in favour of respondent/plaintiff and against applicant.”

10. Accordingly, the application of the defendants was dismissed.



11. Thereafter, the defendants filed an appeal under Sections 96 and 151 CPC against the order dated 04.11.2023 before the District Judge, Sonapat which also stands dismissed vide order dated 29.08.2024. In this regard, the relevant observations of the learned Additional District Judge, Sonipat are contained in Para 12 of the impugned judgment and decree dated 29.08.2024, which read as follows:-

“12. Order IX rule 13 of CPC provides :

13. Setting aside decree ex parte against defendants-in any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by a sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit

Provided that where the decree is of such a nature that it cannot be aside as against such defendant only it may be set aside as against all or any of the other defendants also.

Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, it is satisfied that the defendant had notice of the date of



hearing and had sufficient time to appear and answer the plaintiff's claim.

Meaning thereby by invoking order IX Rule 13 of CPC ex-parte judgment and decree passed against defendants can be set aside upon the satisfaction of court that either the summons were not duly served upon the defendant or he was prevented by "sufficient cause" from appearing when the suit was called for hearing. The proviso appended to the aforesaid order IX rule 13 mandates that no court shall set aside a decree passed ex- parte merely on the grounds of irregularity in the service of summons if it is satisfied that the defendant had notice qua the date of hearing and had sufficient time to appear and answer the plaintiff's claim. Herein, the applicants have developed their case that they did not receive any summon in the suit and false report was procured by respondent/plaintiff company in collusion with the process server. Undisputedly, the civil suit was instituted on 07.10.2011 and, notices were issued for 23.11.2011, and, on said date, court was on leave, resultantly, case was again adjourned to 17.01.2012. On 17.01.2012 notices were received with the report of refusal and as such again notices were ordered to be issued for 13.03.2012. On 13.03.2012 notices were received with the report of refusal from Yashpal PA: of applicants/defendants, resultantly, court ordered for effecting service by way of publication in Punjab Kesri Newspaper, as such, publication was effected on 26.03.2013 and, due to non appearance of defendants, they were proceeded against ex-parte. Krishan Kant- AW deposed on oath that on 19.01.2012 he was posted as Process Server in Tis Hazari Court, Delhi and, summons Ex.A2 to Ex.A4 were



assigned to him for effecting service, and, for effecting service of the same he went to the given address where, one Yashpal Sharma who claimed himself to be PA of Kulwant Rana met him, however, after reading the summons he told that the addressees have gone out and only they will receive the summons and he refused to sign the same. He admitted his signatures on the report on summons. Summons were again issued for 13.03.2012. Lalit Kumar, Process Server-AW3 deposed on oath that on 07.03.2012 he was posted as Process Server in District Court Rohini. On that day, Nazir gave him three summons Ex A5 to Ex. A7 for effecting service and, in compliance thereof, he went to the given address for effecting service but, the addressees were not found there, Yashpal PA to Kulwant Rana refused to accept the summons on the pretext that the addressees have gone out, resultantly, he made his report-Ex.A11 to Ex.A13 on the summons. It is not pleaded and established case of the applicants that they were not residing at the given address. Applicant Kulwant Rana has claimed himself to be three times MLA of Delhi Assembly, therefore, there is every possibility that some PA of applicant would have been in attendance at his residence. AW2 and AW3 i.e. process servers have made attempts to get the service effected on different dates on the correct address and have reported the similar circumstances. Despite their detailed cross-examination neither any oblique motive could be attached to them for making factually wrong report nor their credibility could be assailed. Since, the Process Servers have no motive to make the false report, therefore, their statement on oath cannot be rejected outrightly, that too, on the basis of balled assertion of the applicants.”



12. It has been contended by learned counsel for the petitioners that the Civil Suit (Annexure P1) filed by the plaintiff for recovery of Rs.50 lakh could have been filed only against the Company and not against the petitioners in their personal capacity. However, a perusal of the application filed by the defendants under Order 9 Rule 7 & 13 read with Section 151 CPC (Annexure P4) on 23.01.2023 reveals that no such objection has been taken by the petitioners/defendants in the said application. It is very candidly admitted by the learned counsel for the petitioners that the said objection has been raised on behalf of the defendants for the first time before this Court. As such, no challenge can be laid to the impugned orders on the basis of pleadings which were not made by the petitioners before the learned Courts below; and the said objection of the petitioners cannot be entertained at this belated stage.

13. The objection of the petitioners that the publication was made against them in Haryana and not in Delhi is also liable to be rejected as, as per AW6-Gurpreet Singh, Clerk, Advertisement Daily Punjab Kesari who had deposed that publication was effected in the newspaper on 05.03.2013; and in cross-examination he has admitted that publication was effected in Panipat edition of Punjab Kesari newspaper which is also circulated in Delhi. As such it cannot be held that the defendants were not served and were therefore, not having knowledge of pendency of suit. Following Observations of the learned lower Appellate Court are also relevant: -



“15. Looking the case of the applicants from another angle; notices were also issued to them as JDs in execution petition preferred by respondent and the same are placed on record as exhibited R2 to R4. Perusal of the reports thereupon shows that the same were received by a person namely Suresh Rana on behalf of applicant Anita Rana and Kulwant Rana. Despite that, none appeared on their behalf and notices of sale Ex. R7, Ex.R8 and Ex.R6 were issued on 05.01.2023 against JDs No.1 to 3/ applicants and JDs no. 1 to 3/applicants were served through one Sujata wife of Joginder Rana who claimed herself to be sister-in-law of Kulwant Rana and, it was then that the present application to set aside the 'impugned order' and 'impugned judgment and decree' is preferred. Thus, in execution petition also, service has not been effected personally. This court fails to understand that as to how the applicants derived the knowledge of the execution petition without being served personally in execution petition when as per the case set up by them they could not come to know about the pendency of the suit wherein 'impugned order' and 'impugned judgment and decree' were passed, thus, the entirety of facts shows that the applicants despite having knowledge about the pendency of suit opted not to appear before the court...”

14. Learned counsel for the petitioners is unable to dispute or controvert the above said evidence/findings or give any satisfactory explanation for the same.



15. Furthermore, the petitioners can derive no benefit from the relied upon judgment in case of **Dhanush Vir Singh (supra)** as the same is distinguishable on facts and law.

16. In view of the above, present petition is **dismissed**.

17. Pending application(s) if any also stand(s) disposed of.

16.01.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No