

report against all the three defendants was similar.

4. None of the defendants were found present at their house, accordingly, summons were pasted at their house and they were taken to have been served, accordingly, *ex parte* order dated 18.07.2018 was passed. Thereafter, on 16.07.2019, parents of defendant No.3 i.e. defendant Nos.1 and 2 moved the application for setting aside the *ex parte* order dated 18.07.2018. The said application preferred by defendant Nos.1 and 2 was duly considered and allowed vide order dated 10.09.2019. Thereafter, suits proceeded, defendant Nos.1 and 2 had filed their respective written statements, evidence of plaintiff was recorded and now the matter is pending for defendants' evidence.

5. At the stage of evidence, the present petitioner has moved an application under Order IX Rule 13 CPC, seeking setting aside of *ex parte* order dated 18.07.2018. The said application was contested by plaintiff on the ground that the application is time barred and applicant-petitioner has approached the Court belatedly after passing of about 6 years, despite the fact that he had knowledge about the proceedings pending against him. It is asserted that all the three defendants are residing together and even they had engaged the same advocate in the proceedings under Section 138 of Negotiable Instruments Act against them. That from the conduct of the parties it is clearly made out that petitioner had complete knowledge about the proceedings and intentionally had not appeared before the Court and had now failed to justify the delay in filing the application for setting aside the order after mandatory period of 30 days permissible to seek setting aside of order.

6. The learned Court below has rightly concluded that petitioner had the knowledge of proceedings and therefore, the application of petitioner

under Order IX Rule 13 CPC was belated and beyond limitation and therefore, the application was dismissed.

7. No error with the approach of learned trial Court can be found. The knowledge can be implied or can be expressed. In the present case, the argument that summons were not served or that provisions of Order V Rule 17 and 19 CPC were not adhered to pales in insignificance, once petitioner had the knowledge about the proceedings and chosen not to approach the Court within a period of 30 days from date of knowledge. In the present case, the argument that knowledge cannot be presumed is also without basis. Learned Court of first instance has not presumed knowledge on the part of petitioner, rather from the facts placed before it, has concluded implied knowledge on the part of petitioner. I agree with the conclusion of learned Court of first instance.

8. In the present case, admittedly, all the defendants are residing together in the same house. They have been contesting legal proceedings against them by engaging the same counsel and it is unbelievable that petitioner had no knowledge of proceedings, when his parents had approached the trial Court, moved the application and are contesting the case for the last six years. The Courts are bound to take facts by applying prudence of an ordinary man and therefore, the implied knowledge in the facts and circumstances of the present case are clearly made out.

9. Similarly, the argument that no specific date of knowledge is asserted by plaintiff, is again fallacious for the reason that the parents of defendant No.3 came to know about *ex parte* proceedings in the year 2019 and they had duly moved the application on 16.07.2019 and thereafter, they are regularly appearing till date before the learned Court of first instance. Purpose of issuing notice to defendant is to give opportunity to defend &

present his case before the court. Procedural safeguards in Order 5 CPC are only to ensure that none is condemned unheard. However, if a person despite having due knowledge fails to approach court within period of limitation he cannot plead defect in service. Person who decides to keep quiet despite knowledge of proceedings cannot complain of defect of service if his application for setting aside is beyond period of limitation for setting aside i.e. from date of passing of order or date of knowledge whichever is later. Defendant is entitled to challenge *ex parte* proceedings if he was not duly served and had filed application within period of limitation. In present case no application for condonation of delay has been filed and application for setting aside is beyond limitation. Therefore, none of the grounds for challenging the impugned order is made out. It is clearly made out that petitioner had due knowledge of *ex parte* proceedings against him and has chosen not to approach the Court for six years. Petitioner, however, shall be entitled to join the proceedings at this stage, in accordance with law.

10. The petition stands disposed of in aforesaid terms. Pending application(s), if any, shall also stand disposed of.

28.08.2025
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No