



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR-2540-2017(O&M)  
Date of Decision: July 22, 2025**

M/s PNC Construction Co. Ltd.

...Petitioner

Versus

Yash Pal Sharma and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Suneet Kumar, Advocates  
for the petitioner.

Mr.Sanjay Jain, Advocate  
for respondents No.1 to 3.

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**ARCHANA PURI, J.**

Challenge in the present revision petition is to the order dated 06.02.2017 passed by learned trial Court, whereby, an application filed by the petitioner-defendant No.4 to seek setting aside of the ex-parte order dated 03.07.2014, was dismissed.

In pursuance of the notice issued, contesting respondents made appearance through counsel.

Learned counsel for the parties heard.

The essential facts, as culled out from the paperbook are as follows:-

That, initially, respondents No.1 to 3 (who are plaintiffs before

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learned trial Court) had filed a suit against proforma respondents No.4 to 6 (defendants No.1 to 3) for seeking compensation/damages to the extent of Rs.5 lakh, on account of death of Seema Sharma. However, during the pendency of the suit, even the petitioner was impleaded as defendant No.4 in the suit. Notice of the suit was issued to the petitioner-defendant No.4 through registered cover note, returnable for 03.07.2014. However, on the date fixed, the registered cover note was not received back and raising presumption of due service of the petitioner-defendant No.4, it was observed that defendant No.4 had not made appearance and was proceeded against ex-parte and the case was adjourned further for 09.09.2014. The order passed by learned trial Court on 03.07.2014, for ready reference, is reproduced in verbatim, as herein given:-

*“Notice issued to defendant no.4 through registered AD not received back either executed or unexecuted. The counsel for the plaintiff placed on record postal receipt which shows that def.no.4 was summoned through registered post on 21.4.2014. Thirty days time has already been expired after issuing notice through registered post. It presumed that service of defendant no.4 is completed.*

*Case called many times since morning but neither def.no.4 nor any body else appeared on his behalf. Waited sufficiently. It is already 2.00 p.m. Further wait of def.no.4 is not justified. Therefore, defendant no.4 is proceeded exparte.*

*Replication to the amended written statement not filed. Adjournment sought. Heard. Allowed. To come up on 9.9.2014 for filing of replication o to the amended written statement, if any or framing of additional issues, if arises.”*

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Thereupon, an application was filed for setting aside of the ex-parte proceedings by the petitioner-defendant No.4. Reply to the same was filed and thereupon, after hearing counsel for the parties, the impugned order dated 06.02.2017 was passed, whereby, an application for setting aside the ex-parte proceedings was dismissed.

Being aggrieved, the petitioner-defendant No.4 filed the present revision petition.

At the very outset, it is submitted by learned counsel for the petitioner that due process has not been followed by the trial Court, while conducting the ex-parte proceedings against the petitioner-defendant No.4. Also, in the impugned order, the very fact of the proceedings conducted, was not considered in the proper perspective and in fact, emphasis was laid upon the delay in filing of the application. Further, it is submitted that it never came to the knowledge of the petitioner about the pending suit and in fact, when the petitioner was called as a witness in the Court, only then, the petitioner came to know about the ex-parte proceedings having conducted against him and soon thereafter, the application was filed for setting aside of the ex-parte proceedings. Therefore, there was promptness, on the part of the petitioner, to knock the door of the Court. However, this fact, as such, has not been considered by the trial Court.

On the other hand, learned counsel for contesting respondents-plaintiffs, resisted the claim of the petitioner-defendant No.4. In fact, it is submitted that petitioner was having knowledge about the pendency of the case since very beginning and only thereupon, when the case was at the fag



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end, with the purpose to re-open the same, for de-novo trial, an application was filed and thus, considering the factual position of the case, learned trial Court has rightly dismissed the application.

In view of the rival submissions, at the very outset, it is pertinent to mention that though, at present, it is submitted that it was only, when the record was summoned, that the petitioner came to know about the pendency of the suit, but however, it is nowhere pleaded in the application filed for setting aside of the ex-parte proceedings, copy whereof is Annexure P-10. In the said application, the reason assigned for having been proceeded ex-parte, is given in paragraph No.2 of the application, which is reproduced as herein given:-

*“That previously, the suit was pending for 3.7.2014. A registered notice was sent to the applicant/defendant no.4 which was not received due to office trapezium and the defendant no.4 was proceeded exparte due to non-appearance on 3.7.2017 as the statutory period of 30 days had expired from issuance of registered notice.”*

Thus, it is evident that nowhere in the said application, it is asserted about the petitioner, having come to know about the pendency of the suit, only when he was summoned as a witness to produce the record. Otherwise also, the reason assigned in paragraph No.2 of the application is quite ambiguous. It is stated that it was not received due to official trapezium. What is the official trapezium, nothing as such, has been mentioned and defendant No.4 was stated to have been proceeded against ex-parte for non-appearance.

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It has been rightly observed by trial Court that no specific reason, as such, has been mentioned, as to when and how the petitioner-defendant No.4 became aware of the pending proceedings. Absence of the same, also clearly speaks about his being aware of the pending proceedings and intentionally chose, not to appear in the Court in the present case.

Not only this, it is evident that the summon sent to the petitioner to appear as a witness is Annexure P-8. The same was issued by the Court on 22.12.2016, with reference to make appearance in the Court on 12.01.2017. The petitioner-defendant was proceeded against ex-parte on 03.02.2014. Furthermore, even if, this summon, as such, is also taken into consideration, then also, it is evident that the application for setting aside of the ex-parte proceedings was filed on 19.01.2017 i.e. it was filed, after the issuance of the summons to make appearance on 12.01.2017 and if there was knowledge of the pending proceedings, only after the receipt of the said summons, then the question arises, why this reason was not assigned in the application. The petitioner itself cannot take benefit of the ambiguous pleadings of the application.

Considering the same, no bonafide reason, as such, is assigned by the petitioner-defendant No.4 for not making appearance, despite the registered cover having been issued and seemingly, the petitioner had knowledge about the pending proceedings. Considering the same, the added factor, which has also been taken into consideration by the trial court, while passing the impugned order, is about the pendency of the case since 21.12.2011 and issues wherein, were framed on 09.09.2014 and the

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evidence of the plaintiff was closed on 24.09.2015. It was only at the stage of recording of the defendant evidence, when the case, at its fag end, the petitioner had filed the application. Thus, no bonafide, as such, is made out and no satisfactory reason, is coming forth, for setting aside of the ex-parte order qua the petitioner. Rightly, it has been observed by the trial Court that the party, who sleeps over his right, cannot be given the benefit of laches.

In the light of the same, the impugned order warrants no interference. Hence, the revision petition sans merit and is hereby dismissed.

**July 22, 2025**  
Vgulati

**(ARCHANA PURI)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

**Yes**  
**Yes/No**