114 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO-35-2019(O&M)
Date of decision:03.07.2025

Tej Pal

..Appellant

Versus

Puran Chand

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.N.Sahu, Advocate for the appellant

Mr. Rajesh Duhan, Advocate for the respondent

ANIL KSHETARPAL, J. (Oral)

I. Brief facts of the case:-

1. The appellant assails the correctness of the concurrent orders passed by the courts below while dismissing his application for setting aside ex-parte judgment and decree dated 21.11.2015. The respondent (Puran Chand) filed the suit for the specific performance of contract dated 07.07.2009 with a consequential relief of permanent injunction in which notice was issued to the appellant for 22.03.2012. The Process Server submitted the report that the appellant was not found at the given address, however, his mother Smt. Darshni refused to take the summons. The court in view of Order V Rule 15 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') which requires tendering of summons to an adult male member issued fresh notice. The Process Server vide report dated 26.02.2012 reported that the appellant has refused to accept notice. Subsequently,

on the basis of this report, ex-parte proceedings were ordered against the appellant and the decree was passed. In execution petition, the appellant was served with a notice from the Executing Court and he appeared on 15.01.2017 and thereafter, filed an application under Order IX Rule 13 CPC on 15.01.2018.

2. The appellant, while filing the application to set aside the ex-parte decree submitted that he never refused to accept the summons from the court and the application has been filed within the prescribed time because he came to know of the ex-parte decree on 15.12.2017. It was submitted that the plaintiff has obtained a false report from the Process Server, which resulted in decree.

3. The application was contested by the respondent (plaintiff). The trial court culled out the following issues:-

> "1*) Whether the exparte order dated 22.03.2012 and exparte judgment and decree dated 21.11.2015 are to be set aside on the grounds mentioned in the application? OPA*
>
> *2) Whether the present application is not maintainable in the present form? OPR*
>
> *3) Whether the present applicant has not come to the Court with clean hands and has suppressed true and material facts from the Court? OPR*
>
> *4) Whether the present application is barred by period of limitation? OPR*
>
> *5) Relief."*

II. Evidence Adduced:-

4. The parties were allowed to lead evidence. The appellant (defendant) appeared as AW1 and tendered a copy of the summons dated 22.03.2012 and report dated 26.02.2012.

5. On the other hand, respondent appeared himself as RW1 and produced a copy of the decree and judgment dated 21.11.2015. Both the courts dismissed the application filed by the appellant.

III. Arguments addressed:-

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. Learned counsel representing the appellant contends that it was incumbent upon the respondent to examine the Process Server, who has not been examined in order to prove the report of refusal. Moreover, the application for setting aside the decree has been filed within the prescribed time because the appellant came to know of ex-parte decree only on 15.12.2015 whereas the application was filed on 15.01.2018.

8. Per contra, learned counsel representing the respondent submits that the appellant knew about the ex-parte decree because he appeared through learned counsel on 15.12.2017 in the execution petition. But no application was filed to set aside ex-parte decree for a considerable period. He further submits that there is presumption of correctness in the report submitted by the Process Server, who is a Government servant and therefore, there is no substance in the present appeal.

IV. Analysis and Discussion:-

9. This Court has considered the submissions made by the learned counsel representing the parties.

10. It is evident that the ex-parte proceedings were ordered against the appellant on the basis of an alleged report of refusal to accept notice which was required to be proved by the respondent. The court granted an opportunity to the respondent to lead evidence. Further he failed to examine the Process Server. Opportunity was required to be given to the appellant to cross-examine the Process Server, who had submitted the report that the appellant refused to accept notice. Dispute is with regard to an agricultural land which is sought to be taken away by an ex-parte decree. Reliance in this regard can be placed on judgment rendered in **CR No.4660-2003** titled as **'Prem Singh vs. Bal Kishan and others'** decided on 15.09.2014 and **Bijender Singh vs. Rambir Singh and others, 1991 (2) RCR(Rent) 124**

11. Moreover, the First Appellate Court has also erred in observing that the appellant did not file the application within the prescribed period from the date of knowledge. Hon'ble Supreme Court in **Panna Lal vs. Murari Lal (dead) by LRs, AIR 1967 Supreme Court 1384** interpreted the expression "*knowledge of the decree"* in the following manner:-

> "*(4) In Pundlick Rowji v. Vasantrao Madhav- rao,(1909) 11 Bom LR 1296 Davar, J., held that the expression "knowledge of the decree" in Art. 164 means knowledge not of a decree but of the particular decree which is sought to be set aside, a certain and clear perception of the fact that the particular decree had been passed against him. On the facts of that case,*

Davar, J., held that a notice to the defendant that a decree had been passed against him in the High Court suit No. 411 of 1909 in favour of one Pund- lick Rowji with whom he had no dealings was not sufficient to impute to him clear knowledge of the decree in the absence of any information that the decree had been passed in favour of Pundlick Rowji as the assignee of a promissory note which he had executed in favour of another party. This case was followed by the Calcutta High Court in Kumud Nath Roy Chowdhury v. Jotindra Nath Chowdhury, (1911) ILR 38 Cal 394 at p. 403. In Bapurao Sitaram Kar- markar v. Sadbu Bhiva Gholap, ILR 47 Bom 485: (AIR 1923 Bom 193) the Bombay High of Court held that the evidence of two persons t who had been asked by the plaintiff to the the defendant about the decree and to settle the matter was not sufficient to impose knowledge of the decree on the defendant within the meaning of Art. 164. C. J., said: Macleod,

> *"We think the words of the article mean something more than mere knowledge that a decree had been passed in some suit in some Court against the applicant. We think it means that the applicant must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been passed to against him in a particular Court in favour of a particular person for a particular sum. A judgment-debtor is not in such a favour able position as he used to be when he had thirty days from the time when execution was levied against him. But we do not think that the Legislature meant to go to the other extreme by laying down that time began to run from the time the judgment- debtor might have received some vague information that a decree had been passed against him."*

This decision was followed in Batulan v. S. K. Dwivedi, (1954) ILR 33 Pat 1025 at pp. 1050-8 and other cases. We agree that the expression "knowledge of the decree" in Art. 164 means knowledge of the particular decree which is sought to be set aside. When the summons was not duly served, limitation under Art. 164 does not start running against the defendant because he has received some vague information that some decree has been passed against him. It is a question of fact in each case whether the information conveyed to the defendant is sufficient to impute to him knowledge of the decree within the meaning of Art. 164. The test of the sufficiency is not what the information would mean to a stranger, but what it meant to the defendant in the light of

> *his previous dealings with the plaintiff and the facts and circumstances known to him. If from the information conveyed to him the defendant has knowledge of the decree sought to be set aside, time begins to run against him under Art. 164.. It is not necessary that a copy of the decree should be served on the defendant. It is sufficient that the defendant has knowledge of the material facts concerning the decree, so that he has a clear perception of the injury suffered by him and can take effective steps to set aside the decree."*

12. Similar view has been expressed by this Court in **CR no.1219-2015** titled as **Harbhajan Singh vs. Umrao Singh Dhillon @ Umar Singh Dhillon (dead) through his LRs and others** decided on 05.01.2023**.**

13. The expression "*knowledge of the decree"* has been interpreted to mean that the person should be possessed of sufficient means to file an application for setting aside the ex-parte decree. Undisputedly, the appellant appeared in the execution petition on 15.12.2017. However, thereafter, he inspected the record and filed an application within a period of one month from the date of appearance. Hence, it was not appropriate for the First Appellate Court to hold that the application by the appellant was filed beyond the prescribed period of limitation.

14. While deciding the application under Order IX Rule 13 CPC, the court is required to adopt a pragmatic approach while taking a holistic view of the matter. One should not be condemned unheard unless it is proved that sufficient opportunity was provided to him. In this case, if the Process Server was examined by the respondent, the appellant could have impeached his credibility by putting him

questions in the cross-examination. Cross-examination of a witness is an important right available to a party to prove that the evidence of the witness cannot be relied upon. In this case, the Process Server reported to the court that the appellant refused to accept summons. The court itself could have directed the Process Server to step into the witness box while granting an opportunity to the appellant to cross-examine him. In order to prove the report of refusal to accept notice, it was incumbent for the respondent to examine the Process Server. Consequently, the impugned orders passed by the courts below are set aside. The ex-parte decree passed on 21.11.2015 is set aside. The appellant is granted opportunity to contest the case on merits.

V. Decision:-

15. The appeal stands allowed.

16. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

03.07.2025
rekha

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