

**IN THE COURT OF SHRI MADAN LAL, PCS,
CIVIL JUDGE (SENIOR DIVISION), RUPNAGAR.**

Civil Case No.11/20.03.2015
CIS No.CM/48/2018
CNR No.PBRO02-000427-2015
Decided on: 17.12.2018

Vishal Gupta son of Satdev Gupta son of Budh Ram, resident of Morinda,
Tehsil Chamkaur Sahib, District Rupnagar.

...Respondent/plaintiff

Versus

Sukhdev Singh son of Harbans Singh son of Kapur Sahib, resident of
Village Marauli Kaln, Tehsil Chamkaur Sahib, District Rupnagar.

Applicant/Defendant

**Application under Order 9 Rule 13 CPC for setting aside
ex parte judgment and decree dated 18.04.2014, passed by
this Court against applicant/defendant.**

Present: Sh. S.P Kaushal, Advocate, counsel for applicant/defendant
Sh. V.K Sharma, Advocate, counsel for respondent/plaintiff

Judgment:

Vide this judgment, this Court shall dispose of the
application for setting aside ex parte judgment and decree dated
18.04.2014.

2. The brief facts of the application are that civil suit titled
Vishal Gupta Vs. Sukhdev Singh had come up for hearing before this
Court on 18.04.2014, but on the said date, this Court had passed ex parte
decree and judgment against applicant/defendant. The said judgment and
decree is liable to be set aside due to the following reasons:

i. No service of suit was ever effected on the applicant/defendant nor it

can be inferred that pendency of suit was known to the applicant/defendant.

- ii. Applicant had gone abroad for the last more than 5 years, as such, there was no question of his avoiding service. Significantly, family of applicant/defendant was residing in the village and property which was subject-matter of the said suit was also situated in Village Marauli Kalan, Morinda, District Rupnagar.
- iii. The documents, on the basis of which, said judgment and decree had been passed, were manufactured by respondent/plaintiff and were never executed by applicant/defendant.
- iv. The service of applicant/defendant was ordered to be made through publication in some newspaper which does not go the place, where applicant/defendant was working for gain and as such no presumption can be raised that he was ever served in the suit.
- v. Now, factum of pendency of suit and judgment and decree of this Court dated 18.04.2014 has come to the notice of applicant/defendant through a telephonic call from some person of the village of applicant/defendant and thereafter, applicant/defendant had authorized his counsel to file the present application for setting aside above-said judgment and decree.
- vi. Taking the benefit of said judgment and decree, respondent/plaintiff had filed an execution application, so that he may be able to grab property of defendant.

- vii. There was no unreasonable delay for filing the present application for setting aside ex parte judgment and decree.
- viii. No earnest money as alleged, had been paid by the plaintiff to applicant/defendant.

With these submissions, applicant/ defendant has prayed that ex part judgment and decree dated 18.04.2014 may kindly be set aside.

3. Upon notice, respondent/plaintiff appeared through his counsel and filed written reply taking preliminary objections to the effect that application of applicant/defendant is not maintainable in the present form; applicant/defendant has no locus standi to file the present application; the present application is hopefully time barred and beyond limitation and as such, present application is liable to be dismissed. On merits, it is admitted that the case titled Vishal Gupta Vs. Sukhdev Singh was pending before this Court and the same was ex parte decreed on 18.04.2014. The applicant/defendant had been avoiding service of summons in the said suit, thereafter, Court had ordered to effect the service upon applicant through substitute process and as such, publication in The Tribune was effected as per order of this Court, however, neither applicant nor his counsel came present in the Court and as such applicant was proceeded ex parte in the above-said civil suit. The applicant had not gone abroad as wrongly alleged, however, family of applicant was having knowledge of pendency of the said civil suit. The applicant/defendant had entered into an agreement for sale dated 11.05.2005 in favour of respondent/plaintiff but he had not come forward to get the sale deed executed in favour of

plaintiff, then, respondent/plaintiff had filed suit for specific performance of agreement to sell dated 11.04.2005 and suit was decreed by this Court vide judgment and decree dated 18.04.2014 in favour of respondent/plaintiff. The applicant/defendant was in knowledge of said ex parte judgment and decree dated 18.04.2014. The present application has been filed with mala fide intention to delay the execution proceedings and same is time barred. It is admitted that respondent/plaintiff has filed execution application on the basis of exparte judgment and decree dated 18.04.2014. Remaining averments contained in the application have been denied, accordingly, replying respondent prayed for dismissal of the present application.

4. Rejoinder to written reply of respondent not filed by the applicant. From the pleadings of the parties, the following issues were framed by this Court vide order dated 27.07.2017:-

1. Whether there exists sufficient ground for setting aside ex parte judgment and decree dated 18.04.2014? OPA
2. Whether present application filed by applicant is not maintainable in the present form? OPR
3. Relief.

5. Both the parties were given due opportunities to adduce evidence in support of their respective claims. Applicant/defendant has examined Harbans Singh as AW1, however, the witness has not turned up to face his cross-examination, accordingly, testimony of witness cannot be read into evidence as per Indian Evidence Act. Further, plaintiff has

examined his wife Daljit Kaur as AW2, further applicant has examined Jagdish Singh as AW3. In the documentary evidence, applicant has placed on record certified copy of his passport as Ex.A1 and closed his evidence.

6. On the other hand, Vikas Gupta being Power of Attorney of respondent/plaintiff Vishal Gupta, has examined himself as RW1. In the documentary evidence, respondent/plaintiff has placed on record photocopy of Power of Attorney as Ex.R1, copy of publication dated 15.09.2010 published in The Tribune as Ex.R2 and thereafter, evidence of respondent/plaintiff was closed by order vide order dated 11.12.2018.

7. I have heard learned counsel for the parties and have gone through the file carefully. My findings on the above referred issues are as under:-

Issue No.1

8. The onus to prove this issue was placed upon the applicant. The case of the applicant/defendant is that he was not duly served in the earlier suit filed by respondent/plaintiff as he was abroad at that time. The applicant/defendant was served through publication in newspaper which is not being delivered abroad, hence, respondent/plaintiff got passed ex parte judgment and decree at the back of applicant/defendant. The applicant came to know about passing of the above-said ex parte judgment and decree dated 18.04.2014 through a telephonic call from some person of his village. In order to prove his case, applicant/defendant has examined his wife Daljit Kaur (AW2) and she has reiterated similar facts as narrated by applicant in his application. Further, applicant/defendant has examined Jagdish Singh (AW3) and the witness has corroborated the version of

witness Daljit Kaur (AW2). Learned counsel for applicant/defendant has contended that applicant/defendant was served through publication in a newspaper namely The Tribune which does not deliver abroad. Further learned counsel rely upon case law Meenu Vs. Ajay Singh, 2016 (2), Civil Court Cases, 486, in which Hon'ble Punjab & Haryana High Court has held that ex parte decree passed on the basis of publication in a newspaper is not proper service. It is further contended that no registered cover was sent by the Court at the address of applicant/defendant and no application for substitute service under Order 5 Rule 20 CPC was moved by the respondent/plaintiff. Applicant/defendant was got served through publication in a newspaper and service of a party through publication in newspaper is not a proper service. It is further contended that as applicant/defendant had gone abroad at the time of service nor his family member i.e. his wife was within the knowledge of pendency of the above-said suit, therefore, ex parte judgment and decree dated 18.04.2014 had been obtained by the respondent/plaintiff in connivance with witnesses at the back of applicant.

9. On the other hand, the contention of learned counsel on behalf of respondent is that applicant/defendant was duly served through publication, published in newspaper namely The Tribune dated 15.09.2010 and the applicant/defendant as well as his wife was very well within the knowledge of pendency of civil suit titled Vishal Gupta Vs. Sukhdev Singh filed by respondent/plaintiff for specific performance of the agreement to sell dated 11.05.2005. It is further contended that applicant's

wife Daljit Kaur (AW2), in her cross-examination, has admitted that Process Server had gone to her home and she had told him that her husband resides abroad. The witness Daljit Kaur has further deposed that her husband had not appeared in the said civil suit intentionally and after receipt of summons, she had met her counsel. Thus, applicant's wife has admitted that she was very well within the knowledge of pendency of above-said civil suit and her husband had not appeared in the said civil suit intentionally. It is further contended that applicant/defendant has not turned up into witness box to depose and it is settled law that if a party does not appear into witness box to prove his/her case, then, adverse inference must be drawn against that party. It is contended that applicant was duly served and applicant and his wife were very well within the knowledge of pendency of above-said civil suit and they have not appeared in the said suit deliberately, therefore, ex partae judgment and decree is legal and valid and present application is liable to be dismissed.

10. Heard. The contention of applicant/defendant is that he was not duly served in the main civil suit titled Vishal Gupta Vs. Sukhdev Singh filed by respondent/plaintiff against defendant/applicant as he was abroad at that time and he was got served through publication published in The Tribune dated 15.09.2010 and he was not within the knowledge of pendency of said civil suit. On the other hand, contention of respondent/plaintiff is that applicant/defendant was duly served through publication, published in newspaper The Tribune dated 15.09.2010 and wife of applicant namely Daljit Kaur was very well within the knowledge of

pendency of said civil suit, but applicant/defendant had not appeared in the said civil suit intentionally and deliberately. Original file perused in which summons dated 25.08.2010 issued to applicant/defendant for 03.09.2010, reveals that said summons was received back with the report that he had gone abroad, thereafter, applicant/defendant was ordered to be served through publication in newspaper and accordingly, applicant/defendant was served through publication, published in newspaper, The Tribune dated 15.09.2010. It may be mentioned here that applicant's wife Daljit Kaur (AW2), in her cross-examination, has admitted that Process Server had visited her home and she had told him that her husband reside abroad. The witness has further deposed that her husband had not appeared in the main civil suit intentionally and upon receipt of summons, she had met her counsel qua the pendency of civil suit. The witness has further deposed that summons were issued at her address in the year 2014, thus, applicant's wife Daljijt Kaur has admitted that she and her husband were very well within the knowledge of pendency of civil suit. It is also pertinent to mention here that applicant's wife Daljit Kaur (AW2), in her cross-examination, has deposed that her husband has been residing in Malaysia for the last 5 years and he never visited India during the said period and on 20.03.2015, her husband was in Malaysia. If applicant's husband was in Malaysia for the last 5 years, then, who has put signatures of applicant/defendant on the present application and it is also pertinent to mention here that signatures of applicant/defendant Sukhdev Singh has been put in Punjab as well as in

English language, which also creates doubt. It is also pertinent to mention here that applicant/defendant has not turned up into witness box and it is settled law that if a party fails to appear in order to prove his/her pleadings, then the presumption will arise that a case set up by him/her, is not correct. It is also pertinent to mention here that applicant's wife Daljit Kaur (AW2), in her cross-examination, has deposed that her husband has not executed any Power of Attorney in her favour to contest the present case. Thus, it is duly proved that applicant/defendant was duly served in the civil suit titled Vishal Gupta Vs. Sukhdev Singh, but he did not appear in the said civil suit intentionally and deliberately. Further, it is also pertinent to mention here that the said civil suit was decreed ex parte vide judgment and decree dated 18.04.2014 and present application has been filed by the applicant/defendant in the year 2015, after a gap of about one year. Further, applicant has failed to prove that on which specific date, month or year, he came to know about passing of ex parte judgment and decree, hence, present application is time barred. I rely upon case law cited supra by learned counsel for respondent/ plaintiff. As such, issue No.1 is decided against the applicant/defendant.

Issue No.2

11. The onus to prove this issue was placed upon the respondent. As has been discussed above in Issues No.1 that applicant/defendant was duly served in the civil suit filed by respondent/plaintiff earlier against defendant and the present application is time barred, therefore, application filed by applicant/defendant is not maintainable. Accordingly, this issue is

decided in favour of respondent/plaintiff and against applicant/defendant.

Relief

12. As a result of above discussion, the application fails and the same is hereby dismissed. Memo of costs be drawn accordingly. File be consigned to the Judicial Record Room, Rupnagar.

Announced.

Dated:- 17.12.2018

Anis Ahmed

Stenographer Gr-II

MADAN LAL, PCS,
Civil Judge (Senior Division)
Rupnagar/UID-PB-0200

Present: Sh. S.P Kaushal, Advocate, counsel for applicant/defendant
Sh. V.K Sharma, Advocate, counsel for respondent/plaintiff

No rebuttal evidence of applicant is present. Despite grant of sufficient opportunities, applicant failed to conclude the evidence. Thus, this Court does not find any justification to grant for further adjournment. Hence, the same is closed by order.

Arguments heard. Vide separate judgment of even date application has been Dismissed. Any misc. application pending between the parties shall be deemed to be not pressed. Memo of costs be prepared. File be consigned to the record room.

Pronounced in open court:
17.12.2018

(Madan Lal)
Civil Judge (Senior Division),
Rupnagar/UID-PB-0200

Anis Ahmed
Stenographer Gr.-II

MEMO OF COSTS

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...Respondent/plaintiff

Versus

Sukhdev Singh son of Harbans Singh son of Kapur Sahib, resident of
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Applicant/Defendant

**Application under Order 9 Rule 13 CPC for setting aside
ex parte judgment and decree dated 18.04.2014**

	Applicant	Respondent
1. Stamp on plaint	10-00	--
2. Stamp on power	10-00	20-00
3. Process fee	--	--
4. Misc. Fee	--	10-00
5. DM/SA/M.Fee	—	--
5. Counsel fee	CNF	CNF
Total	20-00	30-00

Given under my hand and seal of this Court on this 17th day of
December, 2018.

(Madan Lal)
Civil Judge(Sr. Division)
Rupnagar/UID-PB-0200

Madan Lal,CJ(SD)/Rupnagar