

Hira Singh Vs Gian Singh 82.17 Exe.

Present: Sh. Gurjit Singh & Jaideep Singh, Advocates counsel for the Decree Holder Hira Singh.

JD exparte, vide order dated 06.11.2017.

Sh. J.S.Gill, Advocate counsel for applicant/JD Gian Singh.

Reply to application U/o 9 Rule 7 of CPC filed on behalf of judgment debtor. Copy supplied. Heard on application under order 9 Rule 7 of CPC for setting aside exparte proceedings against judgment debtor. Learned counsel for judgment debtor has argued that applicant/JD has come to know regarding the exparte order in this execution from the Court complex when he came in connection with some other work. Prior to this the Judgment Debtor/applicant was not aware about the pendency of the execution and passing of order. No process server ever came to the house of judgment debtor/applicant to deliver the summons nor the judgment debtor/applicant ever refused to accept the summons from the process server. Neither the postman ever came to the house of JD/applicant to deliver the RC nor the JD/applicant ever refused to received the registered cover from the postman. It is further averred that no munadi has been effected in village nor any publication has been made in any Newspaper. JD/ applicant has not been served in any manner. The absence of JD/applicant was not intentionally before the Court. The JD/applicant has come to know about exparte proceedings and exparte order from the Court complex, when he came in connection with some other work. It is further contended that the absence of the JD/applicant was neither intentional nor deliberate rather was due to reasons aforementioned. He also argued that an irreparable loss shall be suffered by the applicant/JD, if the application in hand is not allowed.

On the other hand, learned counsel for the Decree Holder has opposed the present application only on the ground that application is malafide one and has been filed with malafide intention with ulterior motive just to delay the decision of the case; judgment debtor No.1 is estopped by his act and conduct from filing the present application; instant application is an abuse of the process of Court and as such, present application be dismissed.

I have considered the contradictory version of the contesting parties and have deliberated over the arguments advanced in the light of pleadings, documents and peculiar facts and circumstances.

Through present application, JD/applicant has sought setting-aside of ex-parte order against him. It has been averred by the JD/applicant that he has come to know about exparte proceedings and exparte order on 06.11.2017 from the Court complex, when he came in connection with some other work. This Court is not in agreement with the contention so raised by learned counsel for the decree holder. Under Order 9 Rule 7

CPC, the JD/applicant was required to show only good cause for his failure to appear in the Court on the date fixed. Without commenting anything on the merits, present application deserves to be allowed as an irreparable loss shall be suffered by the applicant in case the relief sought by the applicant is not granted. The costs are considered to be panacea of all evils in such circumstances.

Accordingly, application in hand is **allowed**, subject to cost of Rs.500/- to JD/applicant to be paid to decree holder. Now to come up on 21.10.2022, for payment of costs and for further proceedings.

Date of Order: 23.09.2022

Stenographer: Arun

(Amandeep)

ACJSD, Patti

UID No.PB0336.