

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).27574/2011

(From the judgement and order dated 07/07/2011 in CR No.3363/2010 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

GHANSHYAM DASS

Petitioner(s)

VERSUS

KAMAL KISHORE & ANR

Respondent(s)

(With prayer for interim relief)

Date: 11/03/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Daya Krishan Sharma, Adv.
Ms.Monika Sharma, Adv.

For Respondent(s) Mr.D.K.Singh, Adv.
Mr.D.Thakur, Adv.
Mr. Abhijit Sengupta, Adv.

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against order dated 7.7.2011 passed by the learned Single Judge of the Punjab and Haryana High Court whereby he dismissed Civil Revision No.3363/2010 filed by the petitioner and upheld the order passed by the trial Court for setting aside ex-parte proceedings against the respondents.

In the suit filed by the petitioner for specific performance of the agreement for sale executed on 30.6.2006, the summons were served upon the respondents but no one appeared on their behalf. Consequently, the trial Court passed order dated 16.1.2007 for ex-parte proceedings and recorded evidence of the petitioner on 11.6.2007. At the stage of arguments, the respondents filed an application under Order XI Rule 7 CPC for setting aside the ex-parte proceedings by asserting that the petitioner had given an assurance for withdrawal of the suit. The trial Court vide its order dated 19.4.2010 allowed the application and set aside order dated 16.1.2007.

The petitioner unsuccessfully challenged the order of the trial Court by filing a petition under Article 227 of the Constitution. The learned Single Judge negatived the petitioner's challenge that the application filed by the respondents was barred by limitation by recording the following observations:

"So far as the question of limitation for filing an application under Order IX Rule 7 of the Code is concerned, the same is not res integra. It has been held by this Court in various judgments that no period of limitation is prescribed for filing an application for setting aside ex parte proceedings under Order IX Rule 7 of the Code. In Trilok Singh v. Smt.Ganga Devi, 1983(1) RLR 688, it was observed that period of 30 days under Article 123 of the Limitation Act, 1963, applies only to an ex parte decree and not to ex parte proceedings and that

there was no limitation provided for setting aside the ex parte proceedings, which depends upon the discretion of the Court, on the peculiar facts of each case. The said observation was reiterated by this Court and followed in *Siri Chand v. Ram Dhan and another*, 1989 (1) Rev.L.R 481.

In another judgment rendered in *Delhi Development Authority v. Shanti Devi*, AIR 1982 Delhi 159, it was observed that there was no rule that an application under Order IX Rule 7 of the Code is to be filed within 30 days from the date of order of proceeding ex parte. Similar view was taken in *Palani Nathan v. Devanai Ammal*, (1989) 2 Mad L.J.259.

This Court in a later judgment rendered in *Kuldip Kaur v. Gurdeep Singh*, 1994(1) Civil Court Cases 0001, after referring to all the previous judgments, also held that no limitation is provided for setting aside ex parte proceedings under Order IX Rule 7 of the Code.

Hence, there is no force in the argument of learned counsel for the petitioner that as the application is filed at a much belated stage, the same is not maintainable."

The learned Single Judge then considered the question whether there was sufficient cause for non-appearance of the respondents and observed:

"In the present case, respondents-defendants have come to the Court with clean hands. They have taken the plea that they have received summons, however, the same were received without copy of plaint. They have further taken the plea that after receiving summons, they contacted the petitioner-plaintiff, who assured them to withdraw the suit and to get the matter settled amicably and, however, lateron they came to know that the suit was not withdrawn and rather he committed some forgery in the original agreement itself and hence, they filed application for setting aside ex parte proceedings."

The learned Single Judge referred to the judgment of this Court in *Surya Dev Rai v. Ram Chander Rai* (2003) 6 SCC 675 and held that the petitioner has failed to make out a case for exercise of power under Article 227 of the Constitution.

We have heard learned counsel for the parties. In our considered view, the detailed reasons recorded by the learned trial Court and the High Court for setting aside the ex-parte proceedings and for dismissal of the petition filed under Article 227 are legally sound and the impugned order does not suffer from any legal infirmity which may justify interference by this Court under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master