
(2001) 05 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1787 of 1983

Madina Dangi Multipurpose Co-op. Society, Madina	APPELLANT
Vs	
Raj Mal	RESPONDENT

Date of Decision : 17-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 6, Order 9 Rule 13, 115 , 151

Citation : (2002) 2 CivCC 41 : (2001) 4 RCR(Civil) 322

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : I.S. Ratta, for the Appellant;

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Despite the fact that this case has been on the regular Board of this Court for a number of days and it was called on various occasions, the learned counsel for the respondents did not appear. Learned counsel for the petitioner required to serve a notice of date of hearing upon the opposite counsel which he was kind enough to do vide his letter dated 25.4.2001. Despite that nobody appears for the respondents and still in the interest of justice, vide orders dated 26.4.2001, the matter was adjourned to 30.4.2001.

2. Plaintiffs filed a suit against defendant for possession of land measuring 7 Kanals 9. Marlas. It was stated that petitioner-society had taken the land on lease from the plaintiffs' father for a period of five years and after the extended period of lease, the period ended in November, 1976 but the society had failed to hand over its possession. In the said suit, the defendants were served but they failed to appear before the Court in furtherance to the notice served upon them. Consequently, the trial Court proceeded ex parte against the defendants and after permitting the plaintiffs to lead evidence passed ex parte decree on 11.5.1982.

3. Defendants filed an application under Order 9 Rule 13 read with Section 151

CPC for setting aside the ex parte decree. The learned trial Court framed issues and even permitted the parties to lead evidence and ultimately dismissed the application filed by the defendants vide its order dated 6.11.1982. The appeal preferred by the said society was also dismissed by the learned Additional District Judge, Rohtak vide its judgment and order dated 7.2.1983 giving rise to the filing of the present revision petition in the year 1983.

4. Learned counsel appearing for the petitioner while relying upon the judgment of the Rajasthan High Court in the case of Ganesh Traders Bombay v. Rohida Industries, 1998(4) RCR(Civil) contended that under the provisions of Order 5 Rule 6 CPC a reasonable time is to be given to a party to appear before the Court and as no adequate time was given, the ex parte decree was liable to be set aside and the Courts below had fallen in error in dismissing the application and appeal preferred by the present petitioner.

5. I am unable to see any error of jurisdiction in the impugned order which could justify interference by this Court in the exercise of its revisional jurisdiction. The scope of the provisions of Section 115 CPC is limited one, It has been noticed in the impugned judgment that service was admittedly effected upon the applicants on 24.4.1982 and they were required to appear before the Court on 26.4.1982. The case of the applicants that they understood the date to be 26.5.1982 was found to be incorrect by the Courts below. The Courts were located at a few kilometres away from the house of the petitioner then the period of two days cannot be termed as insufficient or unreasonable. All that the applicant was required to do was to appear before the Court and even pray fortune. However, the applicants did not appear before the Court on 26.4.1982 and the matter was adjourned for ex parte evidence on 5.5.1982 and for arguments on 7.5.1982 while the decree was passed on 11.5.1982. The learned Courts below correctly took the view that the judgment cited by the petitioner was of no avail. The trial Court specifically noticed that the service was effected prior to the date and the applicants did not appear despite service. On this admitted fact, the principle enunciated by the Calcutta High Court in Chiranjilal Agarwalla and Another Vs. Jai Hind Investments and Industries Pvt. Ltd. and Another, was rightly applied to the facts of the present case. The expression, "sufficient time" as stated in Rule 6 of Order 5 CPC contemplates a "reasonable time" to enable the party to appear and answer before the Court on the date so fixed in the summons. It is conceded before me that the Court of competent jurisdiction was 6-7 Kms, away from the house of the petitioner and thus the period of two days cannot by any means said to be unreasonable or not sufficient. The rules of procedure are intended to further the cause of justice and for appropriate determination of controversy arising between the parties. No party can be permitted to take undue advantage of the procedure and law more particularly when such a party has been negligent in approaching the Court despite due service.

6. Another factor which this Court must take notice of is that these orders were passed as back as in the year 1982-83. The Courts had exercised their judicial

discretion in the facts and circumstances of the case and the law in force at the relevant time. The present petitioner had been dispossessed even prior to the filing of the revision and no stay had been granted while notice of the revision was issued on 25.8.1983. In fact, the interest of the present petitioner was nowhere protected which could entitle the petitioner to receive any benefit from the Court, at this stage of proceedings.

7. For the reasons recorded above, this revision is dismissed. However, there shall be no order as to costs.

8. Petition dismissed.