
(2014) 03 P&H CK 0267
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 3655 of 2008 (O and M)

Rajmal

APPELLANT

Vs

Venu

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2014) 176 PLR 648

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Jagjeet Beniwal, Advocate for the Appellant; Ashwani Arora, Advocate for the Respondent

Judgement

K. Kannan, J.

C.M. No. 19996-CII of 2008

For the reasons stated in the application, delay in filing the appeal is condoned. Application stands disposed of.

F.A.O. No. 3655 of 2008

1. The appeal by the owner is on the ground that he had been set ex parte but the decree has been passed when he was actually not the owner. Admittedly, the appellant was the registered owner at the time of accident. It appears that apart from an appeal filed directly to this court in the above number i.e. F.A.O. No. 3655 of 2008, the appellant had also filed an application to set aside the ex parte decree before the Tribunal. That application appears to have been dismissed. He has preferred a revision against that order and that revision appears to have been withdrawn with liberty to prosecute this appeal. This appeal had been originally dismissed for default but later restored to file. The explanation to Order 9 Rule 13 CPC reads as under:--

Explanation.-Where there has been an appeal against a decree passed ex parte

under this rule, and the appeal has been disposed of on any. ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.

2. When there is an appeal against an ex parte decree, the application to set aside the ex parte decree under Order 9 Rule 13 CPC is incompetent and not vice-versa. Consequently, the dismissal of the application cannot bar a consideration of appeal against the ex parte decree. I directed the counsel to argue on the untenability of the award if he could make out such a case. The argument is that he had sold the vehicle although he continued to be the registered owner at the time of the accident. The award passed against the registered owner was perfectly justified and the claimants' right of recovery against the appellants cannot therefore be assailed. It should have been possible before the award was passed to bring the subsequent purchaser on record as a party and obtain an adjudication that the award was to be passed only against a subsequent purchaser. If that opportunity has been lost, the claimants cannot be put to any sufferance. The entitlement of the appellants shall only be to proceed by means of an independent suit against the subsequent purchaser after satisfying the award in favour of the claimants. In such an adjudication, the claimants shall not be necessary parties and all that would be necessary for the appellant to prove would be that he had been damnified to the extent that the award was passed and that further he had sold the vehicle to the person against whom he would be at liberty to file the suit and recover the amount paid to the claimants.

3. With this liberty, the award already passed stands confirmed and the appellants will have right of recourse against the subsequent purchaser and the driver. Appeal stands dismissed but on the above terms.