

(2010) 11 P&H CK 0565

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 7696 of 2010

Gulzar Singh

APPELLANT

Vs

Jaipal Singh

RESPONDENT

Date of Decision: Nov. 25, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, Order 9 Rule 7
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Alok Singh, J.

Defendant-Petitioner has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India challenging the order dated 28.9.2010 passed by Trial Court as well as order dated 11.11.2010 passed by Appellate Court thereby rejecting the application moved by the Defendant (Petitioner herein) for setting aside ex-parte judgment and decree dated 11.5.2010 under Order 9 Rule 13 Code of Civil Procedure.

2. The brief facts of the present case are that Plaintiff-Respondent has filed suit against Defendant-Petitioner. Defendant-Petitioner was duly served and he has put in his appearance through his counsel on 2.9.2008. On the request of learned Counsel for the Defendant-Petitioner, case was adjourned for 7.10.2008 for filing written statement and reply to the injunction application. Undisputedly on 7.10.2008 again written statement and reply on behalf of the Defendant was not filed and case was adjourned for 13.1.2009 subject to payment of cost of ` 100/-. On 13.1.2009, no written statement and reply was filed and once again case was adjourned to 17.3.2009. On 17.3.2009 also no written statement and reply to injunction application was filed, hence, Court has directed to strike off defence of the

Defendant and directed ex-parte proceedings against the Defendant. After 17.3.2009 case was listed on several dates and ex-parte evidence of Plaintiff was recorded, however, no application under Order 9 Rule 7 CPC was moved. Ultimately case was decreed vide ex-parte judgment and decree dated 11.5.2010. Present application under Order 9 Rule 13 CPC was filed on 7.9.2010 which was dismissed by both the Courts below having observed that no reason has been assigned in the application to remain absent on 17.3.2009 and thereafter on several dates when case was fixed time to time.

4. On being asked what was the reason to remain absent on the dates fixed before the trial Court, learned Counsel for the Petitioner could not point out from the contents of the application any reason for remaining absent despite of valid service on the Defendant. Learned Counsel for the Petitioner tried to develop argument that counsel was negligent and he did not inform the Defendant-Petitioner, hence, Defendant-Petitioner could not appear before the trial Court.

5. I am afraid that I can not accept this argument. The basic principle of law is that neither counsel nor Court can set up third case beyond the pleadings. I am unable to find out even a whisper in the application under Order 9 Rule 13 CPC and in the memo of appeal before the Appellate Court contending that counsel before the trial Court did not inform the Defendant about the dates fixed before the trial Court or about the striking off the defence for non filing of written statement.

6. Ex-parte judgment and decree can only be set aside when Defendant was not served or there was sufficient reason to remain absent when case was fixed before the Court. In the present case Defendant was duly served. His counsel has sought and granted opportunities to file written statement and reply to ad interim injunction application on 2.9.2008, 7.10.2008, 13.1.2009, however, neither written statement/reply was filed nor Defendant or his counsel remained present on 17.3.2009. Hence, there seems to be no justification for non-filing of written statement and for remaining absent during the pendency of suit.

Dismissed.