
(2016) 08 SHI CK 0017

High Court of Himachal Pradesh

Case No: FAO No. 121 of 2008

M/s. Dagshai Auto
Industries

APPELLANT

Vs

H.P. Financial
Corporation Ltd.

RESPONDENT

Date of Decision: Aug. 2, 2016

Acts Referred:

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

Citation: (2016) 166 AIC 723

Hon'ble Judges: Rajiv Sharma, J.

Bench: Single Bench

Advocate: Mr. Suneet Goel, Advocate, for the Appellant; Mr. Ajay Kumar, Senior Advocate with Mr. Dheeraj K. Vashisth, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sharma, J.—This appeal is instituted against the order dated 4.12.2007 rendered by learned District Judge, Solan, in application No.415-S/6 of 2006 in Civil Suit No. 15/1 of 2004/95.

2. The key facts necessary for the adjudication of the appeal are that the respondent, H.P. Financial Corporation Ltd., had instituted a civil suit against appellant No.1, M/s. Dagshai Auto Industries, appellant No.2, Krishan Lal Trehan, Lakhbir Singh, Baldev Singh and appellant No.3 Gurcharan Kaur in this Court. Appellant No.1, M/s. Dagshai Auto Industries was proceeded ex-parte on 23.3.1998. Name of Baldev Singh (defendant No.4 in civil suit) was ordered to be deleted on 17.4.1998. Since appellant No.2 Krishan Lal Trehan and Gurcharan Kaur could not be served by way of ordinary process, they were permitted to be served by way of publication in Punjab Kesari, Jalandhar Edition, vide order dated 4.6.1999 in OMP No.204/1998. Though, appellant No.2, Krishan Lal Trehan and Gurcharan Kaur were served by way of publication in Punjab Kesari,

Jallandhar Edition, issued on 25.11.1999, but none appeared on their behalf and hence, they were proceeded ex-parte on 20.12.1999. During the pendency of the suit, Lakhbir Singh died and suit qua him stood abated. This Court transferred the aforesaid civil suit to the learned District Judge, Solan, due to change in pecuniary jurisdiction vide order dated 19.4.2004. Accordingly, the learned District Judge vide judgment and decree dated 21.6.2004 allowed the civil suit and passed a decree for recovery of Rs. 6,96,642/- with costs and future interest at the agreed rate from the date of the institution of the suit i.e. 27.3.1995 to the date of payment of the aforesaid amount in favour of the respondent and against appellants No.1, 2 and 3 (Gurcharan Kaur, since deceased). No decree was passed against Baldev Singh since his name was deleted vide order dated 17.4.1998. Similarly, no decree was passed against legal representatives of Lakhbir Singh as the suit against him stood abated. It is under these circumstances, an application under Order 9, Rule 13 read with Section 151 C.P.C. was filed by the appellants for setting aside the ex-parte decree dated 21.6.2004 in Civil Suit No. 15/1 of 2004/95.

3. The gist of the application filed by the appellants is that they had shifted to new places after closer of the unit in the year 1992. Gurcharan Kaur started living at Dughri Urban Estate, Phase-1, Ludhiana and appellant No.2 Krishan Lal Trehan in Delhi. They were not apprised of the recovery proceedings pending at Solan. They came to know about the ex-parte decree when they received summons from Debt Recovery Tribunal, Chandigarh for 10.10.2006. The notice was received by Krishan Lal Trehan on 18.9.2006 and Gurcharan Kaur on 19.9.2006 from the Debt Recovery Tribunal, Chandigarh.

4. The application was contested by the respondent on various grounds besides the same being time barred.

5. The application was rejected by the learned District Judge vide impugned order dated 4.12.2007. Hence, the appeal.

6. I have heard learned counsel for the parties and gone through the impugned order carefully.

7. The issues were framed by the learned District Judge in application under Order 9, Rule 13 read with Section 151 C.P.C. on in the witness-box and deposed that they were running an industry under the name and style of M/s. Dagshai Auto Industry. He was its managing partner. Due to loss, the unit was closed. After closer of the factory, he along with Gurcharan Kaur etc. shifted to Ludhiana and Delhi and for sometimes, they had been residing in Ratpur Colony Pinjore. He was also living at Jagadhari and Ludhiana, besides Delhi. When the unit was functional, they were residing at Pinjore and thereafter, he shifted to Delhi in the year 1992. The respondent knew their addresses. Publication did not come to their notice. In cross-examination, he admitted that they left the house at Pinjore in the year 1993, but they did not inform the respondent. He came to know about the ex-parte decree when the notice from Debt Recovery Tribunal was received. Thus, according to the appellants, they were not duly served during the pendency of the civil

suit. The fact of the matter is that the appellants have not informed the respondent about their changed addresses. When the appellants could not be served by way of ordinary process, they were ordered to be served by way of publication in Punjab Kesari, Jalandhar Edition vide order dated 4.6.1999 in OMP No.204/1998. Appellant No.2 Krishan Lal Trehan and Gurcharan Kaur were served by way of publication in Punjab Kesari, Jalandhar Edition, issued on 25.11.1999, but they did not put in appearance before the court and hence, they were proceeded ex-parte on 20.12.1999. Thus, the appellants were duly served by way of publication. They were bound to inform the respondent about their changed addresses when they shifted to new places. There is no material placed on record by the appellants that they got information of the ex-parte decree only after the notice from the Debt Recovery Tribunal, Chandigarh, was received. The application was also barred by limitation. Accordingly, there is neither any perversity nor illegality in the impugned order dated 4.12.2007 rendered by learned District Judge, Solan, in application No.415-S/6 of 2006 in Civil Suit No. 15/1 of 2004/95.

8. Consequently, in view of analysis and discussion made herein above, there is no merit in the appeal and the same is dismissed. Pending application(s), if any also stands disposed of. No order as to costs.