

Punjab-Haryana High Court

Cranes India And Anr. vs State Bank Of India And Ors. on 2 August, 1993

Equivalent citations: (1993) 104 PLR 638

Author: N Jain

Bench: N Jain

ORDER N.C. Jain, J.

1. The order of mine will dispose of two Civil Revision Petitions numbering 688 and 738 of 1990, as they are directed against similar orders passed by the trial Court on 24.1.1990. The order reads as under :-

"Suit against defendant Nos. 1, 2, 4 and 5 stands already decreed The application therefore becomes infructuous and is, accordingly, dismissed.

For consideration regarding suit against defendant No. 3, in in the afternoon".

2. The afore mentioned order has been passed by the trial Court upon an application having been preferred by the petitioners for setting aside the ex-parte decree passed against them as well as other defendants, who never filed an application for setting aside the ex- parte decree. The Counsel for the parties have tried to take this Court into some of the mandatory provisions which according to them have not been complied with in the present case However, this Court need not to go into any provision is the revisional court is not to enter upon the merits of the matter. This court is to see whether the ground on which application for setting aside the ex-parte decree has been dismissed can be sustained in law or not. The application was given for setting aside the ex parte decree and, therefore, the passing of such an ex-parte decree itself cannot be made a ground for making the application infructuous It would amount to begging the question. In my considered view whenever an application for setting aside an ex parte decree is filed, the court is under a legal obligation under Order 9 Rule 13 of the Code of Civil Procedure to go into the averments made in the application and the reply, if any, and decide upon the material available to it as to whether a good case under Order 9 Rule 13 C.P.C. for setting aside the ex-parte decree has been made out or not. In the instant case, it has remained undisputed before me that even the reply of the plaintiff was not obtained by the trial Court. Since the trial Court did not comply with the procedure of Order 9 Rule 13, Code of Civil Procedure, there is no other option left with this Court but to set aside the impugned order and direct the trial Court to decide the application for setting aside the ex-parte decree afresh after obtaining the reply of the plaintiff.

3. For the reasons recorded above, the order under revision is quashed. The trial Court is directed to pass a fresh order in accordance with law, on consideration of the relevant pleas of the parties and on such material which is made available to the trial Court. The application for setting aside the ex-parte decree be decided expeditiously and preferably within one month. The parties through their counsel are directed to appear before the trial Court on 16.8.1993. Copy of the order be given dasti to the counsel for the parties and the record of the case be sent back to the trial court through special messenger.