

Punjab-Haryana High Court

Paramjit Kaur vs Amarjit Singh @ Jeet Singh And ... on 25 August, 2009

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Revision No. 1168 of 2005  
Date of Decision : August 25, 2009

Paramjit Kaur

....Petitioner

Versus

Amarjit Singh @ Jeet Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. B.S. Bhasaur, Advocate  
for the petitioner.

Mr. P.S. Dhaliwal, Advocate  
for respondent No.1.

T.P.S. MANN, J.

Civil Suit No.110 dated 16.5.1998 was filed by Amarjit Singh @ Jeet Singh, respondent No.1 herein, against Paramjit Kaur and others. It was decreed ex parte on 20.5.1999. On 21.7.1999, an application was filed by Paramjit Kaur, petitioner herein, and her husband Surjit Singh, respondent No.2 herein, under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree dated 20.5.1999 on the ground that they were never served in the suit filed by Amarjit Singh nor they knew about the same. Reply to the application was submitted by Amarjit Singh that the pendency of his suit was well within the knowledge of the defendants. Moreover, the application was time barred. Accordingly, he prayed for dismissal of the application.

On 20.8.1999, learned trial Court framed the following issues:-

"1. Whether the application under Order IX Rule 13 C.P.C. is within time ? OPA.

2. Whether there are sufficient grounds to set aside the ex parte judgment and decree passed in Civil Suit No. 110 of 16.5.1998 decided on 20.5.1999 titled as 'Amarjit Singh Versus Paramjit and others' ? OPA.

3. Relief."

After hearing learned counsel for the parties and going through the evidence, learned trial Court held that the pendency of the civil suit filed by Amarjit Singh was in the knowledge of the defendants on 5.6.1998 when Amarjit Singh filed reply to an application of Paramjit Kaur under Order I Rule 10 of the Code in another suit bearing No.124 dated 19.5.1998 titled 'Amarjit Singh Vs. Raj Singh and others' wherein he categorically disclosed that Civil Suit No.110 dated 16.5.1998 filed by him was pending for 14.6.1998 and he had obtained a stay order against the defendants. As the defendants knew about the pendency of the suit, the application filed by them on 21.7.1999 for setting aside ex parte decree dated 20.5.1999 was time barred. Accordingly, the application under Order IX Rule 13 of the Code was dismissed.

Aggrieved of the order passed by the learned trial Court, both Paramjit Kaur-petitioner and her husband Surjit Singh-respondent No.2 filed an appeal but the same was also dismissed by the lower appellate Court on 16.11.2004. Still not satisfied, Paramjit Kaur is now before this Court in a revision filed under Section 115 of the Code.

Learned counsel for the petitioner had submitted that neither any summon nor any registered letter was served upon the petitioner and her husband in Civil Suit No.110 dated 16.5.1998 filed by Amarjit Singh. In spite of the fact that Amarjit Singh knew that she and her husband were residing at Kothey Ram Sar, near Drain Bridge, Baja Khana Road, Barnala, he described them to be residents of Barnala in the suit. It was done with the sole purpose of getting an ex parte decree in his favour against the petitioner and her husband. The petitioner and her husband learnt about the ex parte decree a day before they filed the application under Order IX Rule 13 of the Code and then they contacted their Pairokar asking him to obtain information regarding the decree. After being informed about the passing of the decree on 20.5.1999, they applied for getting certified copy of the decree. Going through the decree, the petitioner and her husband came to know that Amarjit Singh had obtained the ex parte decree as a result, wherefore, the earlier judgment and decree dated 23.10.1996 obtained by them had been declared as null and void. Accordingly, it was prayed that the revision be accepted, impugned judgments passed by the learned Courts below be set aside and the application under Order IX Rule 13 of the Code be allowed.

Learned counsel for contesting respondent No.1 had argued that the petitioner and her husband Surjit Singh were aware of the suit filed by him. Thrice, they refused to accept the registered letters. They were served through publication in a daily newspaper on 31.10.1998 and when they did not appear on 3.11.1998, they were proceeded against ex parte. Respondent No.1 had filed Civil Suit No.124 dated 19.5.1998 against Raj Singh and others wherein Paramjit Kaur-petitioner filed an application under Order I Rule 10 of the Code so as to be impleaded as a party-defendant. In his reply dated 5.6.1998 to the said application, respondent No.1 had categorically mentioned that he had filed the present suit, i.e. Civil Suit No.110 dated 6.5.1998 against the petitioner and her husband and wherein he had obtained a stay order against them. As such, the petitioner and her husband were well aware of the present suit and, therefore, it did not lie in their mouth to now plead that they had no knowledge about the same. It was also submitted that though the petitioner and her husband were claiming in their application under Order IX Rule 13 of the Code that they were residing at Kothey Ram Sar, near Drain Bridge, Baja Khana Road, Barnala yet they were residents of Barnala and, therefore, described as such in the present suit. Even, while filing their application

under Order IX Rule 13 of the Code, the petitioner had supported her averments by filing an affidavit, wherein she mentioned herself to be resident of Barnala. Again, in her application under Section 151 C.P.C. moved before the learned trial Court for the stay of the operation of the ex parte decree and also in the affidavit in support thereof, she described herself to be resident of Barnala. As the petitioner and her husband came to know on 5.6.1998 about the pendency of the suit when respondent No.1 had filed his reply to the application under Order I Rule 10 of the Code, the application filed by them under Order IX Rule 13 of the Code on 21.7.1999 was time barred as the suit was decreed ex parte on 20.5.1999. Therefore, learned lower Courts rightly declined to grant any interference to the petitioner and her husband on their application under Order IX Rule 13 of the Code.

The records of the case, which were requisitioned, have been thoroughly examined.

While appearing as AW1, Smt. Paramjit Kaur-petitioner described herself to be a resident of Barnala. She admitted that she had filed an application under Order I Rule 10 of the Code through her counsel but the same was dismissed. The said application dated 28.5.1998 has been brought on record by the plaintiff/contesting respondent No.1 as Ex.R3 wherein Paramjit Kaur pleaded that she be also impleaded as party-defendant in Civil Suit No.124 dated 19.5.1998 titled Amarjit Singh @ Jeet Singh v. Raj Singh and another. The aforementioned application filed by the petitioner was replied by respondent No.1 on 5.6.1998 wherein it was specifically mentioned by him that he had also filed Civil Suit No.110 dated 16.5.1998 and pending for 14.6.1998 and also obtained an order of stay against the petitioner. The said reply is on the record as Annexure R2. The application dated 28.5.1998 (Annexure R3) submitted by the petitioner was dismissed by learned Civil Judge (Junior Division), Barnala on 15.6.1998 vide order Ex.R4. While ordering so, learned Judge mentioned the factum of the pendency of the present suit, i.e. Civil Suit No.110 dated 16.5.1998. Relevant observations made regarding the pendency of the present suit are reproduced as under :-

"In the revenue record, the applicant is not the owner in possession. No khasra girdawari entered to the name of applicant and no mutation has been sanctioned to her name which has already been challenged and the same is pending in the Court of Shri Baljinder Singh, P.C.S., Civil Judge (Junior Division), Barnala, and he has also secured the stay from the Court regarding the alienation, the Photostat copy of the order dated 16.5.1998 has been attached with this reply. The respondent/plaintiff has prayed for dismissal of application.

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The alleged decree dated 23.10.1996 has already been challenged in the Court of Shri Baljinder Singh, P.C.S., Civil Judge (Junior Division), Barnala. Due to this reason, the applicant Paramjit Kaur is not necessary party in this case."

From the above, it stands established that the petitioner and her husband Surjit Singh had known on the basis of reply dated 5.6.1998 (Ex.R2) and order dated 15.6.1998 (Ex.R4) that plaintiff/respondent No.1 had filed Civil Suit No.110 dated 16.5.1998. Despite the same they did not take any steps to put in appearance before the trial Court in the present suit.

A perusal of ex parte judgment dated May 20, 1999 (Ex.R1) would reveal that the petitioner and her husband were served in the suit on 31.10.1998 through publication in a daily newspaper. Despite the same, they failed to put in appearance before the learned trial Court and were resultantly, proceeded against ex parte.

Though, according to plaintiff/respondent No.1, the petitioner and her husband were residents of Barnala yet they had pleaded in their application under Order IX Rule 13 of the Code that they were residing at Kothey Ram Sar, near Drain Bridge, Baja Khana Road, Barnala. As mentioned above, the petitioner and her husband, while filing their application did aver that they were residents of Kothey Ram Sar and their said address was mentioned at the end of the application also where they affixed their thumb impressions. However, alongwith aforementioned application, the petitioner had sworn in an affidavit wherein she mentioned herself to be resident of Barnala. Similarly, in their application under Section 151 C.P.C. for staying the operation of the ex parte decree dated 20.5.1999 and also the affidavit sworn in support thereof they were described as residents of Barnala. Anyhow, learned trial Court had agreed with the stand of the petitioner and her husband that the complete and proper address of the petitioner and her husband was not mentioned in the suit and they were simply stated to be residents of Barnala, but once it is held that the petitioner and her husband were aware of the pendency of the present suit, they were required to file an application within a period of 30 days, but instead they filed such an application only on 21.7.1999, which was clearly time barred.

In view of the above, no case is made out for interference in the orders passed by the learned lower Courts while declining the prayer of the petitioner and respondent No.2 for setting aside ex parte decree. The revision is, accordingly, dismissed.

August 25, 2009  
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( T.P.S. MANN )  
JUDGE

Whether to be referred to the Reporters : YES / NO