

CR No.104 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.104 of 2015
Date of decision:08.01.2015**

Salam Din and another ...Petitioners

Versus

Mohd. Anwar and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Mohd. Yousaf, Advocate,
for the petitioners.

Rakesh Kumar Jain, J.

The plaintiffs filed a suit for specific performance of an agreement to sell dated 18.02.2000 in respect of land measuring 8 kanal 6-2/3 marlas (5 Bighas), being 50/231 share out of land measuring 38 kanal 10 marlas, for a consideration of ₹1,35,000/-. In the said suit, the defendants were proceeded against *ex parte* on 28.02.2006 and *ex parte* judgment and decree was passed on 29.01.2007. Thereafter, defendant no.1 filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) for setting aside the *ex parte* proceedings dated 28.02.2006 and *ex parte* judgment and decree dated 29.01.2007. Defendants no.2 and 3 also filed similar application after the application filed by defendant no.1 and both the applications were taken up together. The trial Court dismissed both the applications vide its order dated

11.03.2014 against which defendant no.1 filed CMA No.20 of 27.03.2014 and other defendants filed CAO No.16 of 16.04.2014. Again both the appeals were taken up together and the appeal filed by defendant no.1 was allowed and *ex parte* judgment and decree was set aside, whereas the appeal filed by defendants no.2 to 5 was partly allowed and *ex parte* judgment against them was also set aside but the *ex parte* order dated 18.10.2005 was not set aside.

Counsel for the petitioners has argued that defendant no.1 had the knowledge of this case, as admitted by him in his cross-examination, while appearing as AW3, therefore, the finding recorded by the lower Appellate Court that he was not aware of the proceedings as the counsel who had appeared on his behalf was without any authority is patently erroneous.

After hearing learned counsel for the petitioners and examining the record, I am of the considered opinion that there is no merit in his argument because in his cross-examination as AW3, defendant no.1 had only stated that he came to know about the case from his family but it does not mean that he came to know about the case when it was filed. He has not stated that he knew about the pendency of the suit at the time when he had to appear or when he was proceeded against *ex parte* or when the decree was passed *ex parte* against him, therefore, the petitioners cannot be allowed to make a mountain from a mole hill by twisting the statement of AW3 to their benefit. The lower Appellate Court has given cogent reasons in arriving at a conclusion that defendant no.1 was not aware of the proceedings and hence,

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the appeal was allowed and not only the *ex parte* proceedings but also the *ex parte* judgment and decree was set aside.

Insofar as the other application filed by defendants no.2 to 5 is concerned, that has been allowed partly but no separate revision petition has been filed to challenge the order passed in their favour and as a matter of fact, no argument has been raised in respect of their case by learned counsel for the petitioners while arguing the present revision petition as he had only referred to the statement of AW3.

In view thereof, I do not find any merit in the present revision petition and hence, the same is hereby dismissed.

January 08, 2015
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Rakesh Kumar Jain
Judge