

214

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

CR No.1021 of 2012 (O&M)

Date of decision: July 24, 2015

J.M.D. Cititech (P) Ltd.

.....Petitioner

Versus

Hukam Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Ms. Ritu Pathak, Advocate
for the respondent.

SABINA, J

Petitioner has filed this petition challenging the orders dated 04.11.2011 and 12.01.2012.

Learned counsel for the petitioner has submitted that the respondent had filed suit for possession by way of cancellation of the sale-deed dated 10.05.2006. Petitioner-company was impleaded as a defendant through Manoj Kumar Wadhawa (one of the directors/authorised signatory of the company). Petitioner was proceeded *ex parte* and *ex parte* decree was passed in favour of the respondent on 12.09.2009. Petitioner moved an application under Order 9 Rule 13 of Code of Civil Procedure, 1908 ('CPC' for short) for setting aside the *ex parte* decree. During the pendency of the said application, petitioner moved another application for permission to place on record resolution dated 22.03.2010. The said application was

dismissed by the trial Court vide order dated 15.11.2011 on the ground that the original resolution was not produced on record. Thereafter, petitioner moved another application for permission to lead additional evidence qua resolution dated 22.03.2010. The said application was dismissed vide the impugned order dated 12.01.2012. Learned counsel has submitted that resolution in original will also be produced before the trial Court.

Learned counsel for the respondent, on the other hand has opposed the petition and has submitted that the petitioner was required to place the resolution passed by the company authorising Manoj Kumar Wadhawa to file the application under Order 9 Rule 13 CPC at the time of filing of the said application. Moreover, the resolution sought to be proved on record did not specifically authorise Manoj Kumar Wadhawa to file an application under Order 9 Rule 13 CPC in the present case.

In the present case, suit was filed by the respondent against the company through Manoj Kumar Wadhawa (one of the directors of the company/authorised signatory). Respondent had sought cancellation of the sale-deed dated 10.05.2006 and had sought possession of the suit property. Petitioner was proceeded *ex parte*. During the pendency of the proceedings initiated by the petitioner for setting aside *ex parte* proceedings against the company, an application was moved to place on record resolution dated 22.03.2010. Although, the

petitioner had failed to place on record copy of the said resolution at the time of filing of the application under Order 9 Rule 13 CPC, but in the interest of justice, the said resolution should have been allowed to be proved on record. The evidentiary value of the resolution dated 22.03.2010 could be seen by the Court at the time of decision of the application under Order 9 Rule 13 CPC. However, the application moved by the petitioner for permission to place on record resolution dated 22.03.2010 was liable to be allowed. In fact, the plaintiff himself had filed the suit against the company through Manoj Kumar Wadhawa (one of the directors of the company). It appears that due to this reason, resolution dated 22.03.2010 may not have been placed on record by the said director while moving the application under Order 9 Rule 13 CPC. It appears that with a view to overcome any legal objection at a later stage, application was moved by the company to place on record resolution dated 22.03.2010.

Accordingly, this petition is allowed. Orders dated 04.11.2011 and 12.01.2012 are set aside. Consequently, application moved by the petitioner for permission to prove on record resolution dated 22.03.2010 is allowed.

**(SABINA)
JUDGE**

July 24, 2015
mahavir