

CR No.2476 of 2004 (O&M)

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

**CR No.2476 of 2004 (O&M)
Date of decision:20.01.2015**

Chiranji Lal Sharma (dead) through LRs

...Petitioners

Versus

Charanjit Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. D.S.Bali, Senior Advocate, with
Mr. Amrinder Singh Virk, Advocate, for the petitioners.

Mr. Ranjit Saini, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The plaintiffs-respondents no.1 and 2 filed a suit for declaration challenging the sale deed dated 18.10.1998 executed by Smt. Bachni-respondent no.3 (since deceased) in favour of Chiranji Lal Sharma (since deceased), now represented through his legal heirs as petitioners, on the basis of Will dated 05.11.1998. The issues in the suit were framed on 23.01.1993 and defendant Chiranji Lal Sharma was proceeded against *ex parte* on 14.10.1994 and *ex parte* judgment and decree was passed against him on 16.12.1994. Chiranji Lal Sharma filed an application on

05.08.1995/07.08.1995 for setting side the *ex parte* proceedings dated 14.10.1994 and the *ex parte* judgment and decree dated 16.12.1994. The trial Court dismissed the application on 01.10.1999 and the appeal filed against it was dismissed on 05.12.2003. The Civil Revision Petition filed by the defendant Chiranji Lal Sharma was initially dismissed by this Court on 18.12.2008 but the said order was re-called because the appeal was dismissed before the lower Appellate Court by Shri H.S.Bhalla as a District Judge and the revision petition was also inadvertently dismissed by him as a Judge of this Court.

Be that as it may, learned counsel for the petitioners has argued that application filed by Chiranji Lal Sharma for setting aside the *ex parte* proceedings has been dismissed on the grounds that he had not taken any action against the advocate Shri Ajay Mahajan who has alleged to have not informed him about the date of hearing and that he was proceeded against *ex parte*; he did not produce any medical record and had been appearing in the injunction suits, therefore, had knowledge of the present suit also.

Counsel for the petitioners has submitted that the fault is entirely of the advocate who did not inform Chiranji Lal Sharma about the date of hearing and has relied upon a decision of the Supreme Court in the case of **Rafiz and another v. Mushilal and another**, AIR 1981 Supreme Court 1400.

On the other hand, counsel for the respondents has argued that Chiranji Lal Sharma himself has to be blamed for not appearing in the Court or defending his suit and the petitioners have made lame excuse which were

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not believed by the Courts below and dismissed their application and the appeal.

I have heard learned counsel for the parties and perused the available record with their able assistance.

On the application filed by Chiranji Lal Sharma for setting aside the *ex parte* proceedings and the decree, as many as 3 issues were framed on 19.08.1996 and the parties were allowed to lead their evidence. It has been observed that Chiranji Lal Sharma had tried to shift the blame upon the counsel Shri Ajay Mahajan on the ground that he did not inform him about the factual position but admittedly, no action was taken against him for his alleged professional misconduct either before the Bar Association, Chandigarh or the Bar Council of Punjab and Haryana, Chandigarh who had granted him license to practice law. It was also observed that it is not the case of the petitioners that their counsel was won over or colluding with the other party. The trial Court also observed that the case set up by the petitioners that Chiranji Lal Sharma was unwell was without any medical evidence brought on record. The deceased Chiranji Lal Sharma has also stated in his cross-examination that after Shri Ajay Mahajan, Advocate, he had engaged Shri Ajit Pal Singh, Advocate and then Mr. Dhiman, Advocate but they also did not inform him about the stage of the case and the order passed therein. He also stated that there were two injunction suits between the parties which were pending in the same Court i.e. the Civil Court at Chandigarh, in which he was appearing regularly, therefore, it was observed that it cannot be believed that Chiranji Lal

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Sharma, who had been coming to the Court Complex to attend his other pending cases, would not have come to know about the *ex parte* proceedings on 14.10.1994 and eventually the *ex parte* judgment and decree passed on 16.12.1994. It was also found that the application filed by Chiranji Lal Sharma was barred by limitation and it was not supported by any application for condonation of delay. Similar observations have been made by the lower Appellate Court when his appeal filed against the order of the trial Court was dismissed.

There is no dispute about the observations made by the Supreme Court in **Rafiz's case (supra)** that after paying the fee, the litigant becomes confident and sanguine that his advocate would look after his interest and on account of misdemeanour of inaction on the part of his counsel, the litigant should not be allowed to suffer but that was a case where the litigation was a rustic villager and here is a case in which the litigant is not a rustic man rather he had been appearing in other cases pending in the other Courts in the same judicial complex and had the occasion to verify the progress of his case even if allegedly Shri Ajay Mahajan, Advocate, who had been appearing on his behalf, did not inform him. It appears that it has become the tendency of the litigants to blame their advocates in such type of cases without taking any action against them. If there is a professional misconduct on the part of the advocate, the litigant can always approach at least the Bar Association of which he is a member or the Bar Council who had granted him the license to practice law. Since no such action was taken by the petitioners, the Courts below have rightly

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observed that the allegation against the advocate cannot be believed especially when the petitioners could not prove the other excuses that Chiranji Lal Sharma was not well as no medical evidence was produced on record. Chiranji Lal Sharma had been appearing in other cases pending in the same Judicial Court Complex and, therefore, the cause shown by him for the purpose of re-calling the order of *ex parte* proceedings and the *ex parte* judgment and decree against him cannot be believed.

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

January 20, 2015
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(**Rakesh Kumar Jain**)
Judge