

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

Civil Revision No.3728 of 2015 (O&M)

Date of decision: 27.08.2015

Ram Chand

.....Petitioner

Versus

Raj Paul

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Abhimanyu Singh, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order/judgment dated 11.03.2015 (Annexure P-8) passed by the Additional District Judge, Patiala, dismissing an appeal filed by Ram Chand-defendant No.1 (petitioner herein) against the order dated 17.12.2013 passed by the Civil Judge (Junior Division), Rajpura, whereby his application under Section 5 of the Limitation Act along with application under Order 9 Rule 13 CPC has been dismissed.

Pursuant to an agreement to sell dated 20.07.2002, present petitioner had agreed to sell his house measuring 100 Sq. yards, situated at Neelpur, Tehsil Rajpura, District Patiala, for a total sale consideration of Rs.70,000/- and had received Rs.47,000/- as earnest money from the plaintiff-respondent. However, he failed to execute the sale deed in favour of respondent-plaintiff. Consequently, a suit for specific performance was filed in the year 2002 and the petitioner was served in that case in the year 2007. Thereafter, an exparte decree was passed on 01.05.2009 (Annexure P-1). The petitioner filed an application for setting aside the said exparte

decree after a lapse of 2 years and 9 months. Main argument of the

petitioner-defendant No.1 was that even though he was duly served on 28.03.2007, his counsel, thereafter, did not proceed with the case before the trial Court, which led to the passing of impugned exparte decree dated 01.05.2009 (Annexure P-1).

After going through the original file of the lower Court, it was observed by the lower appellate Court that defendant No.1-petitioner was duly served on 28.03.2007 and he had signed on the summons himself. The signatures of the petitioner were not disputed. It was held that the petitioner had made the application in order to wriggle out of the decree passed by the trial Court and there was no sufficient ground for condonation of delay. Reference was made to the judgments passed by the Hon'ble Supreme in **Jagdish Lal & others Vs. State of Haryana & others**, 1998 (1) S.C.T. 26, **P.K. Ramachandran Vs. State of Kerala & another**, 1997 (4) RCR (Civil) 242 and **Esha Battacharjee Vs. Raghunathpur Nafar Academy and others**, 2013 (4) RCR (Civil) 785, wherein it was held that the Courts have no power to extend the period off limitation on equitable grounds. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. The Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

In the facts of the present case, the petitioner after being served in the civil suit on 28.03.2007, intentionally did not appear before the trial Court, which resulted into passing of an exparte decree dated 01.05.2009 (Ex.P1). Thereafter, he filed the present application after a long time without giving any sufficient cause for condonation of delay. The application has been rightly dismissed by the Courts below as no plausible

In view of the above, no ground is made out to interfere with the impugned orders dated 17.12.2013 and 11.03.2015 (Annexures P-6 and P-8 respectively) passed by the Courts below.

Dismissed.

27.08.2015
ajp

(RITU BAHRI)
JUDGE