

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

CR No.3531 of 2014 .

Date of decision: 04.12.2015

Gurnam Singh

Vs.

... Petitioner

Jog Raj

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sanjay Gupta, Advocate
for the petitioner.

Mr. K.S.Cheema, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved against the orders dated 22.02.2014 and 27.03.2014, whereby, the application filed by the respondent-judgment debtor restoring the miscellaneous application dismissed in default on 26.07.2011, has been allowed. Even the application filed under Order 9 Rule 13 of the Code of Civil Procedure, purported to have been dismissed on 22.07.2008 has also been restored.

Mr. Sanjay Gupta, learned counsel appearing on behalf of the petitioner-plaintiff submits that suit for specific performance of the

agreement to sell was filed on 4.10.2001 but despite service, respondents have not appeared and proceeded against ex parte and the ex parte judgment dated 16.01.2002 was passed, wherein, the application under Order 9 and Rule 13 filed in the year 2002 itself and for determination of cause, the issues in this regard were framed. The respondent- judgment debtor was granted many opportunities but did not lead any evidence and the same was closed by the order. Despite that they did not come forward to address arguments which necessitated the trial Court to dismiss the application vide order dated 22.07.2008 (Annexure P-3). Thereafter, the application dated 01.09.2008 for restoration of the application filed under Order 9 Rule 13 CPC, was filed which was also dismissed in default on 26.07.2011. Then respondent filed another application dated 23.08.2011 seeking restoration of the aforesaid application which was allowed vide order dated 22.02.2014. He further submits that decree has been satisfied and the impugned order is not sustainable as no application was moved seeking restoration of the application filed under Order 9 Rule 13 CPC, much less, there was no prayer in the application dated 23.08.2011 vide which the applicant seeking restoration of the application filed under Order 9 Rule 13 CPC had been dismissed for non-prosecution. Such lackadaisical approach on behalf of the JD should not be entertained and thus, the orders impugned suffer from illegality and perversity.

Mr. K.S.Cheema, learned counsel appearing on behalf of

the respondent submits that defendant-JD had entered into agreement to sell but did not sign the agreement. Such evidence is essential and necessary, in case, chance is given to contest the suit on merits. Though the trial Court should not have granted the liberty by its own order dated 22.02.2014/27.3.2014 vide which application filed under Order 9 Rule 13 CPC has been restored but the fact remains that in order to advance justice, the Court had to fix the matter for consideration of the application under Order 9 Rule 13 CPC, and no harm would be caused in case, the application is heard on merits.

I have heard learned counsel for the parties and appraised the paper book.

Even if it is assumed that there is no illegality and perversity in the impugned orders dated 22.02.2014 and 27.03.2014, the fact remains that JD has not led any evidence in support of the averments made in the application filed under Order 9 Rule 13 CPC, therefore, even if the argument on the application under Order 9 Rule 13 CPC has to be addressed, no useful purpose would be served as the application is not supported by any documentary evidence, rather the parties to the lis would be at in situation, which exists today.

In my view, the approach of the JD in getting the application dismissed in default and subsequent dismissal of the application shows the callous and tardy approach which should not

be interfered at back call of such litigant. There was no prayer in the application for restoration of main application filed under Order 9 Rule 13 CPC and the prayer was only with regard to recalling of the order dated 26.07.2011, whereby, the application had been moved to recall the order dated 22.07.2008, vide which the application under Order 9 Rule 13 CPC had been dismissed.

It would be apt to reproduce the relevant part of the order dated 22.07.2008, which reads thus:-

“Though there was no necessity for the applicant/respondent to lead evidence on that application but he led evidence.

Today none has appeared on behalf of JD/applicant. An application under Order 9 Rule 13 stands dismissed. Now decree holder is directed to file the draft of sale till 31.07.2008.”

Thereafter, after the draft sale deed was given by the petitioner the sale deed was executed in favour of the petitioner and as symbolic possession had already been delivered, the execution application moved by the petitioner on the basis of ex parte decree dated 16.2.2002 was dismissed as fully satisfied vide order dated 25.04.2009.”

Keeping in view the aforementioned reasons, the impugned orders are not sustainable and the same are hereby set

aside.

Accordingly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

December 04, 2015
savita