

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

**Civil Revision No. 4362 of 2015 (O&M)
Date of decision:- 20.08.2015**

Rajinder Kaur and anr.

...Petitioners

Versus

Shamsher Singh & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.P.S. Randhawa, Advocate
for the petitioners.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside the impugned judgment and decree dated 11.11.2013 passed by the learned Civil Judge (Sr. Divn.) Ajnala and judgment and decree dated 24.02.2015 passed by the learned Additional District Judge, Amritsar.

Plaintiff/Respondent No. 1 (for short 'respondent No. 1) filed a suit for specific performance of agreement to sell dated 12.06.1986 executed by defendant Nos. 1 and 2 in favour of respondent No. 1 in respect of land measuring 4 kanals 7 marlas bearing Khasra No. 375 (4-7), Khata Khatauni No. 1563/2489.

Brief facts of the case are that defendant Nos. 1 and 2

entered into agreement to sell dated 12.06.1986 for consideration of Rs.7830/- and the entire sale consideration was paid by respondent No. 1. No period was fixed for execution of the sale deed, though the entire sale consideration was received and possession was delivered to respondent No. 1. In the first week of May, 2009, respondent No. 1 requested the defendant Nos. 1 and 2 to execute the sale deed but to no effect. It came to the notice of respondent No. 1 that defendant No. 1 had sold his $\frac{1}{2}$ share of the suit property in favour of defendant No. 3, vide sale deed dated 22.05.2009, who is the wife of defendant No. 1. The said sale deed has been executed to defeat the rights of respondent No. 1, as defendant No. 3 was well aware of the existence of the agreement. The defendants have threatened respondent No. 1 to alienate the suit property to someone else.

On notice, the defendants filed a joint written statement and pleaded that respondent No. 1 got executed a sale deed from defendant No. 2 on 22.07.2009 in favour of his son Amandeep Singh and signed the said sale deed and as such, there was no agreement to sell in question. On merits, the factum of agreement is denied. The agreement to sell is forged and fabricated document. The plaintiff is not in possession of the suit land, rather the defendants are in possession of the suit land.

However, when the case was fixed up for evidence of

defendants, they failed to appear in the Court and they were proceeded against ex parte, vide order dated 15.10.2013 and suit against defendant No. 2 has been ordered to be dismissed as withdrawn.

The trial Court decreed the suit of respondent No. 1. Shamsher Singh while appearing in the witness box placed on original agreement to sell dated 12.06.1986 and proved its execution by examining P.W.2 Gurwant Singh (Attesting witness). He placed on record jamabandi for the year 2005-06 and 2010-11 as Ex P2 and P-4, which duly proved the ownership of defendant No. 1 and defendant No. 2 over the suit land bearing Khasra No. 375 (4-7). The jamabandi also proved the possession of respondent No. 1 over the suit land. It was held that respondent No. 1 was already ready and willing to execute the agreement to sell but the contents of agreement to sell reveals the date of execution of agreement to sell was not fixed. It is a settled law that unless the deed of agreement to sell stipulated a date for performance, time is not always of the essence of the contract. Reference has been made to judgment of ***D.S. Thimmappa vs. Siddaramkka, 1996(8) SCC 365***. Further the cause of action arose to respondent No. 1 on 22.05.2009, when defendant No. 1 had executed the sale deed in favour of his wife-defendant No. 3. Further, defendant No. 3 had not led any evidence to show that she is a bona

fide purchaser. Hence, it was held that since the evidence led by respondent remained un-rebutted and un-challenged, he has duly proved the execution of agreement to sell dated 12.06.1986.

The defendants preferred an appeal on 21.05.2014 against the judgment and decree passed by the learned trial Court along with application under Section 5 of the Limitation Act. The explanation given by the defendants for the delay that they had gone to see their children at Agra in the month of August, 2013, where they fell ill and were thus unable to attend the proceedings of the case and were not aware about the fate of their case. They were proceeded ex parte on 15.10.2013 and the suit of respondent No. 1 was decree ex parte on 11.11.2013. After getting the certified copy of the judgment on 14.05.2014, the appeal has been filed by the defendants along with the application.

The Lower Appellate Court dismissed the application filed by the defendants on the ground that the defendants failed to prove and produce the prescription slips and medical record as regards their illness and getting treatment. They have failed to examine any doctor to prove their illness. Further, the defendants failed to produce any railway tickets as regards their visit from Amritsar to Agra, up and down. They have not even disclosed the specific date of their visit to Agra. Further, the affidavit filed by Rajinder Kaur was unsigned nor it

has been got attested from any Oath Commissioner. It was held that it was the civil suit and presence of the parties in civil suit was not necessary and their counsel, who represented them, could have appeared in the Courts. If they had fallen ill, they should have intimate their counsel as regards their illness, moving request for adjournment for evidence but the defendants failed to adopt any such course.

After hearing learned counsel for the petitioners, the present revision petition deserves to be dismissed.

Reference at this stage can be made to a judgment passed by a Co-ordinate Bench of this Court in a case titled as ***Surinder Kaur and another vs. Sameer Bhatia, 2011(5) RCR (Civil) 811*** wherein the petitioners filed restoration application after a period of 16 months and they have taken a plea that their counsel told them that he would inform them whenever their presence would be required but the counsel not informed them and the petitioners shifted from Faridabad to Kapurthala. However, the petitioners failed to mentioned in restoration application or in revision petition as to when they shifted. Moreover, mere shifting was held to be not a ground for non-appearance in trial Court. The plaintiffs are bound to remain in touch with their counsel to know about the proceedings of the suit. No proper explanation for long delay of almost 16 months in filing

restoration application has been given. Since plaintiff could not produce any evidence, they thought it proper to get the suit dismissed-in-default so as to avail the remedy of seeking restoration of suit whenever they thought it fit or suitable to them. The suit was held to be hopelessly time barred.

Recently, a co-ordinate Bench of this Court in a case of ***Bhagirath vs. Rukna Devi and others, 2015 (1) ICC 503*** while examining a case wherein the plaintiff filed a suit on 02.04.1997 and it was dismissed-in-default on 20.07.1999 and restored on 14.08.1999, subject to payment of Rs.1000 as costs. Since the said costs were never paid, the suit was eventually dismissed on 30.09.2003. Thereafter, a time barred civil appeal was filed on 29.11.2003 accompanied with the application under Section 5 of the Limitation Act. The appellant was also dismissed-in-default on 04.08.2004 and thereafter, the application dated 30.09.2004 seeking restoration of the appeal was again dismissed on 22.07.2010 as none had appeared for the applicant. Another application for restoration was dismissed on 01.08.2014. This Court in para 8 of the judgment has observed as under:-

8. *The object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. These are meant to see that the parties do not resort to dilatory tactics. In **Indian Council for***

Enviro-Legal Action vs. Union of India and others, 2011

(8) SCC 161 also, it was noticed that the conduct of the parties is to be taken into consideration. The relevant observations in Indian Council's case (*supra*) read as under:-

“216. In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must

effectively discourage fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment.

The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

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223. The other aspect which has been dealt with in great details is to neutralize any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view.

1. It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

2. When a party applies and gets a stay or injunction

from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

4. A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

5. No litigant can derive benefit from the mere pendency of a case in a court of law.

6. A party cannot be allowed to take any benefit of his own wrongs.

7. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

8. The institution of litigation cannot be permitted to confer any advantage on a party by delayed

action of courts.”

In the present case, it is clear that the petitioner was trying to delay the proceedings, as he had filed the appeal along with delay application after a period of six months and the plea taken by him that he was ill but the defendants failed to explain the delay by leading cogent and convincing evidence.

The Courts below has dealt with the matter in correct perspective and there is no illegality in the impugned judgment and decree dated 11.11.2013 passed by the learned Civil Judge (Sr. Divn.) Ajnala and judgment and decree dated 24.02.2015 passed by the learned Additional District Judge, Amritsar, warranting interference in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

The revision petition is devoid of merit and is accordingly dismissed.

August 20, 2015

G Arora

(**RITU BAHRI**)
JUDGE