

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

Civil Revision No.5106 of 2015

Date of decision: 30.11.2015

Chaman Lal and another

.....Petitioners

Versus

Jangsher Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Sharma, Advocate,
for the petitioners.

Ritu Bahri, J.

Challenge in this petition is to the judgment dated 13.05.2015 (Annexure P-5) passed by the Additional District Judge, Ambala, dismissing an appeal filed by the petitioners against the order dated 18.10.2014 (Annexure P-3) passed by the Civil Judge (Senior Division), Ambala, whereby application filed by the petitioners under Order 9 Rule 13 CPC for setting aside the exparte judgment and decree dated 10.08.2010, has been dismissed.

Jangsher Singh-plaintiff (respondent herein) filed a suit for possession by way of specific performance of agreement to sell dated 29.12.1997. In that suit, the defendants-petitioners were ordered to be proceeded against exparte on 03.01.2008. Thereafter, the said suit was dismissed in default on 16.12.2008. The plaintiff-respondent made an application for restoration of the suit on 22.01.2009, which was allowed.

Ultimately, the suit of the plaintiff-respondent was decreed exparte vide

Division), Ambala. In the meantime, the defendants-petitioners had sold the disputed land to one Shingara Singh etc., who came to know about the said proceedings only when warrants of possession was issued qua the said land. Thereafter, they being *bonafide* purchaser filed objections against the order of warrants of possession. In this background, the vendees approached the defendants-petitioners in October 2011 and thereafter, they (defendants) made an application for setting aside the *exparte* judgment and decree dated 10.08.2010.

Upon notice, plaintiff-decree holder (respondent) filed reply to the said application and controverted the allegations made by the defendants-petitioners.

From the pleadings of the parties, following issues were framed:-

1. Whether there are sufficient grounds for setting aside the *exparte* judgment and decree dated 10.08.2010? OPP
2. Relief.

The trial Court, after going through the evidence led by the parties, dismissed the application filed by the defendants-petitioners. Lower appellate Court affirmed the findings of the trial Court and dismissed the appeal.

At the time of institution of the suit, they (defendants) had been duly served, but subsequently, vide order dated 03.01.2008, they were proceeded against *exparte*. However, the suit was dismissed in default on 16.12.2008. Thereafter, consequent upon an application made by the plaintiff-respondent for restoration of the suit, the Court had issued notices for 16.09.2009, 09.12.2009, 06.04.2010, 20.04.2010, 08.05.2010, 20.07.2010 and 26.08.2010. Finally, the application for restoration of the

suit was allowed on 26.07.2010. Thereafter, the *exparte* decree was passed

on 10.08.2010. The trial Court while dismissing the application, had observed that after passing of exparte judgment and decree in the year 2010, applicant-Chaman Lal had received summons on 18.04.2011 in Execution Petition No.36 of 2010, for 23.04.2011. However, he did not appear before the executing Court on 23.04.2011 and had been proceed against exparte in execution petition as well. The present application for setting aside the exparte judgment and decree was filed on 21.11.2011, which was beyond the period of 30 days from the date of knowledge as the defendants-JDs had been proceeded against exparte in execution petition on 23.04.2011. Once, Chaman Lal had received summons qua execution petition on 18.04.2011, it was his responsibility to appear before the Court through a counsel on 23.04.2011 when they were proceeded exparte. The present application for setting aside the exparte judgment and decree was filed beyond the period of 30 days after receiving summons in execution petition. Therefore, the application being barred by limitation has been rightly dismissed by the Courts below. While dismissing the application, reference has been made to the judgments passed in Richpal Singh Vs. Jaspal Singh, 2010 (1) RCR (Civil) 7461, Mahabir Singh Vs. Subhash & others, 2008 (1) CCC 88 (SC).

Moreover, the trial Court dismissed the application of the petitioners on 18.10.2014 and against this order, an appeal was filed on 27.01.2015, which was also beyond the period of limitation. The judgment debtors-defendants (petitioners) had sold the property in the year 2001 to a third person before filing the written statement in the suit. This fact shows that they had consciously not taken part in the proceedings of the main suit after the exparte order was passed on 03.01.2008. During the pendency of execution petition, they were duly served, but proceeded against exparte

exparte judgment and decree dated 10.08.2010 was filed, which was beyond the period of limitation. No plausible explanation has been given for causing delay in filing the application before the Court.

After going through the impugned order/judgment(s), this Court is of the view that the Courts below have rightly dismissed the application for setting aside the exparte judgment dated 10.08.2010 and no ground is made out to interfere therein.

Dismissed.

30.11.2015
ajp

(RITU BAHRI)
JUDGE