

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

Civil Revision No.7674 of 2013(O&M)

Date of decision: 23.04.2015

Mohan Lal, aged 55 years, son of Shri Rau Ram, resident of Village Hanjira, Tehsil and District Sirsa.

... Petitioner

versus

Jagdish son of Shri Manphool son of Shri Sheoji, resident of Village Hanjira, Tehsil and District Sirsa.

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. P.K. Ganga, Advocate,
 for the petitioner.

Mr. Ashok Verma, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The suit for specific performance was filed on the basis of an agreement of sale of property of ₹ 2,55,000/-. An advance of ₹1,30,000/- was said to have been paid on the date of the agreement in 2010. The plaintiff had been served but remained ex parte. At the stage of execution when the notice was served again, the defendant has filed the petition to set aside the ex parte decree on

17.10.2011. The application was dismissed and the appeal was also dismissed. The revision is against that order.

2. The contention of the petitioner is that the sale agreement was meant to be only a security for the loan advanced, namely, an amount of ₹1,30,000/- received by him but the plaintiff had fabricated an agreement of sale of the property which was worth about ₹25 lakhs. It will be put to a great hardship if the property is lost at such a low price. I cannot vouch for the correctness of the contentions as regards the value of the property, but I am at least convinced that a man, who claims that he had lost all his properties, must at least have an opportunity to bring a defence of what he wants to place, but for the indiscretion in allowing the decree in spite of service in suit, the petitioner must compensate the respondent for the expenses incurred. I would find a further flaw in the whole proceedings that the defendant has not even filed an application within 30 days from the date when the ex parte decree was passed and has taken the notice in execution as the starting point for limitation. In a case where summons is served, the limitation will begin from the date of the decree as per Article 126 of the Limitation Act. This is only to state the law correctly and inform the petitioner that his own petition was not even filed within time and that ought to be taken as an additional ground for imposition of costs.

3. Considering the fact that the petitioner has stood by a benefit of receipt of ₹1,30,000/- at the date of agreement, I direct the petitioner to deposit ₹5 lakhs to the credit of the suit before the court below within a period of 4 weeks. On such deposit, the respondent-plaintiff shall be permitted to withdraw ₹2.50 lakhs. Any amount, which the plaintiff-respondent has already deposited at the time of execution of sale deed, will also be permitted to be withdrawn by him. Out of ₹2.50 lakhs, ₹1.30 lakhs will be taken to be provisionally the amount which the defendant has himself received and the remaining ₹1.20 lakhs will be taken to be the cost which the petitioner pays to the respondent for having the ex parte decree set aside. The remaining ₹2.50 after withdrawal by the respondent will continue in court, which in turn could be put in bank deposit and shall not be permitted to be withdrawn and this is intended to be merely as security for costs which the respondent may seek to recover depending on the outcome of his litigation, to the extent to which the plaintiff-respondent is able to furnish details of costs and which is approved in the decree in the event of his success. In the event of failure of the respondent-plaintiff ultimately, the petitioner-defendant will be permitted to withdraw the balance of ₹2.50 lakhs that will remain in deposit with accrued interest.

4. Apart from deposit of costs in the manner directed above, the statement shall be filed, if it has not already been filed,

within 4 weeks from the date of receipt of copy of this order and if not done, the defence will be struck off and the court may proceed to dispose of the case in accordance with law. The order impugned is set aside and the revision petition is allowed to the above extent.

(K.KANNAN)
JUDGE

23.04.2015
sanjeev