

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

(219)

CR No.7937 of 2013

Decided on: April 9, 2015.

Sahid Ahmad

.... Petitioner

Versus

Ganga Ram

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Rakesh Dhiman, Advocate,
for the petitioner.

M.M.S. BEDI, J (ORAL)

The suit filed by Ganga Ram plaintiff-respondent for specific performance of an agreement of sale was decreed exparte on 26.05.2007 against the defendant-petitioner. The defendant-petitioner filed an application under Order 9 Rule 13 CPC to set aside the exparte decree. The said application was dismissed in default on 08.01.2011.

Learned counsel for the petitioner submits that the application under Order 9 Rule 13 CPC was fixed for recording of the evidence of the petitioner on said date. The application for restoration of the application under Order 9 Rule 13 CPC has been dismissed vide order dated 23.10.2013 on the ground that the petitioner has not been diligent from the very beginning and had evaded to produce any evidence till 08.01.2011.

Notice was issued to the respondent. As per the office report, the respondent was served for 04.11.2014 but failed to put in appearance before this Court. This Court has got no alternative except to proceed to hear the revision exparte against the plaintiff/respondent/decree-holder.

Counsel for the petitioner informs that the petitioner was not well on 08.01.2011 when his application for restoration of the application under Order 9 Rule 13 CPC was dismissed in default.

I have heard learned counsel for the petitioner.

It is apparent on the record that the petitioner has been negligent and casual in his approach to seek setting aside of exparte decree. It is apparent that the petitioner is interested in prolonging the proceedings for one or another reason. But, at the same time, the prejudice which is likely to be caused to him would be fatal to him. At least he deserves to be given a fair opportunity to contest his application under Order 9 Rule 13 CPC to get the exparte decree set aside for specific performance. The costs seem to be adequate penecia for his conduct. The interest of justice would be adequately met in case the application for restoration of application under Order 9 Rule 13 CPC is allowed and the application under Order 9 Rule 13 CPC is restored subject to payment of costs of Rs.15,000/-.

This petition is allowed. The order dated 08.01.2011 and 23.10.2013 are set aside. The application under Order 9 Rule 13 CPC stand restored. The petitioner will be given two effective opportunities to conclude his evidence in application under Order 9 Rule 13 CPC after restoration of his application under Order 9 Rule 13 CPC. It is observed that in case the petitioner does not offer the costs on the next date of hearing, this petition will be deemed to have been dismissed.

Disposed of.

(M.M.S. BEDI)
JUDGE

April 9, 2015
harsha