

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

Civil Revision No.7991 of 2013 (O&M)

Date of decision: 29.10.2015

Om Parkash and others

.....Petitioners

Versus

Subhash

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Keshav Partap Singh, Advocate,
for the petitioners.

Mr. Aman Pal, Advocate,
for the respondent.

Ritu Bahri, J.

Challenge in this petition is to the judgment dated 30.09.2013 passed by the District Judge, Bhiwani, dismissing the appeal filed by the applicants-petitioners against the judgment dated 22.03.2011 passed by the Civil Judge (Senior Division), Bhiwani, whereby their application under Order 9 Rule 13 CPC for setting aside the exparte judgment and decree dated 09.12.2006, has been dismissed.

Parties to the lis are related being brothers and they were disputing sale of house in dispute on the basis of agreement to sell dated 28.11.2000, which was executed between the petitioners and the respondent. The petitioners had agreed to sell the house in dispute in favour of respondent, which did not materialise into a sale deed. Therefore, the plaintiff-respondent filed a suit for specific performance of agreement to sell dated 28.11.2000. The defendants-petitioners appeared before the trial Court up

to the stage of recording of evidence. Thereafter, they failed to attend the court and were proceeded against exparte on 05.09.2005. Eventually, exparte judgment and decree dated 09.12.2006 were passed against them. On 26.03.2007, they filed an application under Order 9 Rule 13 CPC for setting aside the exparte judgment and decree, which was dismissed on 22.03.2011 primarily on the ground of delay and insufficient cause. The petitioners were unable to establish any sufficient cause for non appearance before the trial Court. However, the dispute being between closely related family members, the matter was adjourned to enable the petitioners to seek instructions, whether they were ready to explore the possibility of settlement. In this petition, notice of motion was issued on 22.07.2014 only to the limited extent of exploring the possibility of resettlement. Thereafter, service upon the respondent was effected for 17.09.2014 and the matter was adjourned for 09.02.2015. Thereafter, a misc. application i.e. CM No.2935-CII of 2015 was made by the petitioners for staying the execution proceedings.

Mr. Aman Pal, Advocate, accepted notice on behalf of the non applicant-respondent and informed the Court that there was no possibility of compromise.

After hearing learned counsel for the parties, this Court finds no merit in this petition. Om Parkash-petitioner examined himself as AW-1 and admitted that they did not have their Lawyer's telephone number nor their lawyer had their number. In his cross-examination, he had deposed that they had attended the Court on the initial 2-3 dates in the year 2004, but thereafter, they had stopped attending the Court. Once, their Lawyer had stopped exchanging telephone numbers and they were not in touch with

clearly showed that there was no intention of the petitioners to proceed with the trial. The petitioners were duty bound to follow the progress of trial and the exparte decree could not be set aside without any sufficient explanation. There was no ground for setting aside the exparte judgment and decree dated 09.12.2006. Even after getting notice from the executing Court on 24.02.2007, the present application was filed on 26.03.2007 and this delay of more than one month was not sufficiently explained by the petitioners. The Civil Judge (Senior Division), Bhiwani, in its judgment dated 22.03.2011, had observed that respondent (RW-1) in his affidavit (Ex.RW1/A) had reiterated the averments mentioned in the reply and had deposed that the applicants-petitioners had met their Lawyer several times after they were proceeded exparte. His testimony to this effect could not be shaken during cross-examination. Finding no ground to set aside the exparte judgment and decree, the application filed by the petitioners under Order 9 Rule 13 CPC was dismissed.

The lower appellate Court, on appeal, affirmed the judgment passed by the trial Court and observed that counsel for the applicants-petitioners namely Mr. D.N. Gulia, Advocate, did not appear in the witness box on behalf of the petitioners to prove that he had directed them to come as and when told by him. No such affidavit was filed by Mr. D.N. Gulia, Advocate, in favour of the petitioners. Moreover, exparte judgment was passed on 09.12.2006, whereas the present application for setting aside the exparte proceedings as well as exparte judgment and decree was filed on 26.03.2007. As per petitioners they had come to know about the aforesaid exparte decree only when they received notice of execution proceedings.

The lower appellate Court further observed that notice of the execution

application under Order 9 Rule 13 CPC was filed on 26.03.2007. The ground taken by the petitioners for setting aside of the exparte judgment and decree dated 09.12.2006 were not accepted by the lower appellate Court and accordingly, their application was dismissed.

After going through the impugned judgments/orders passed by the Courts below, this Court is of the view that there is no merit in the present petition. Moreover, notice in this petition was issued to the limited extent of exploring the possibility of settlement between the parties. However, learned counsel for the respondent, on instructions, has informed that there was no scope of compromise. Therefore, no ground is made out to interfere in the impugned judgments/orders.

Dismissed.

29.10.2015
ajp

(RITU BAHRI)
JUDGE