

CR-8258-2014

Date of Decision: 07.04.2015

Sher Mohammad

.....Petitioner

Versus

Jamila and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Arjun Atri, Advocate
for the petitioner

...

SABINA, J.

Petitioner has filed this petition challenging the order dated 04.08.2014 whereby the application moved by the petitioner for setting aside exparte proceedings against him, was dismissed.

Learned counsel for the petitioner has submitted that respondent No.1 has filed suit for specific performance of agreement to sell in question. Petitioner was arrayed as defendant No.2 in suit filed by respondent No.1. On 01.04.2013, petitioner was proceeded exparte as his counsel had withdrawn his power of attorney qua the petitioner. Petitioner had no notice that his counsel had withdrawn his power of attorney. Petitioner was a bona fide purchaser for consideration and in case he was not permitted to join the proceedings, he would suffer an irreparable loss.

None has appeared on behalf of the respondent No.1-
plaintiff.

In the present case, respondent No.1 has filed suit for specific performance of agreement to sell dated 30.05.2012 executed by respondent No.2 in favour of respondent No.1. Initially the petitioner was represented by his counsel. However on 01.04.2013, counsel for the petitioner appeared and stated that he was filing written statement qua defendant No.1 only and withdrew his power of attorney qua the petitioner. Consequently, petitioner was proceeded ex parte. In the facts and circumstances of the present case, the learned trial Court should have issued notice to the petitioner as he had apparently no notice that his counsel had withdrawn the power of attorney qua him. The case of the petitioner is that he was a bona fide purchaser for consideration. In case the petitioner is not permitted to join the proceedings, he will suffer an irreparable loss.

Accordingly, this petition is allowed and impugned order is set aside. Consequently, application moved by the petitioner for setting aside ex parte proceedings against him is allowed subject to payment of Rs.5,000/- as costs. Costs be deposited with District Legal Services Authority, Nuh.

**(SABINA)
JUDGE**

April 07, 2015
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