

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.4740 of 2015 (O&M)

Date of Decision.26.08.2016

Jasvir Kumar @ Jasbeer Kumar

.....Petitioner

Vs.

Gurbax Singh and another

.....Respondents

Present: Mr. Arjun Veer Sharma, Advocate
for the petitioner.

Mr. Aayush Gupta, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J. (ORAL)

C.M. No.10940-CII of 2016

Application is allowed.

Annexures P-1 to P-7 (colly) are taken on record.

C.R. No.4740 of 2015

The petitioner-defendant No.2 is aggrieved of the dismissal of the application moved under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree 14.02.2008, vide impugned order dated 10.03.2012, affirmed by the lower Appellate Court vide impugned order dated 11.02.2015.

Mr. Arjun Veer Sharma, learned counsel for the petitioner submits that the respondent-plaintiff being vendee instituted a suit for specific performance of agreement to sell dated 13.09.2006. The trial Court ordered for service upon the defendants on 05.02.2007. Defendant No.1 being brother of petitioner-defendant No.2, accepted the summons but the

No.2 was again ordered vide order dated 19.2.2007. The petitioner had suffered a fracture of neck and right tibia and was admitted in Max City Hospital on 02.02.2007 and discharged on 18.03.2007. During the interregnum, the defendant No.1, brother, had also entered into agreement to sell dated 17.10.2006 with regard to his share. The petitioner could not be present and remained ex parte and coming to know about execution, application under Order 9 Rule 13 CPC was moved on 01.12.2008. Both the Courts below have dismissed the application on the premise that the petitioner had the knowledge of the suit but did not contest the proceedings nor lead any evidence that he was not effectively served. However, he submits that the counsel did not bring on record the aforementioned evidence i.e. medical record which was given to the counsel and in this regard, misc. application has been moved and the medical record is attached along with application as Annexures P-1 to P-7. He submits that evidence of the petitioner was closed in the application under Order 9 Rule 13 CPC and the said order assailed by invoking the provisions of Order 43 Rule 1(a) CPC, in appeal, was affirmed by the lower Appellate Court. He submits that in case one effective opportunity, subject to terms and conditions, is granted, the petitioner shall prove his case.

Mr. Aayush Gupta, learned counsel for the respondents submits that such an attempt is not only lackadaisical but mala fide and in order to prolong the execution of the judgment and decree. The defendants are hands in glove with each other and apparent collusion between the brothers. There is specific order of service upon the defendants vide order dated 05.02.2007. Both the Courts below examined the aforementioned evidence and rightly so, dismissed the application filed under Order 9 Rule 13 CPC,

thus, urges this Court for confirming the orders under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the petitioner is required to be granted opportunity to lead evidence in respect of service, in the application under Order 9 Rule 13 CPC, owing to the fact that he was hospitalized due to fracture in the neck and right tibia from 02.02.2007 to 18.03.2007 and the medical record reveals this fact.

In view of the fact that the petitioner-defendant No.2 behaved in a lackadaisical and insouciant manner, in my view, he requires to be imposed with costs of ₹50,000/-. The impugned orders are set aside. The application under Order 9 Rule 13 CPC is restored and the petitioner-defendant No.2 is given three effective opportunities to lead evidence equally so to the respondent-plaintiff, subject to payment of costs of ₹50,000/- to the counsel appearing for the respondent-plaintiff in the High Court. The Court is sanguine of the fact that on conclusion of the evidence aforementioned, the trial of the application under Order 9 Rule 13 CPC shall be concluded within a period of six months thereafter. This order is passed only qua petitioner-defendant No.2.

The civil revision petition is allowed on the above terms.

(AMIT RAWAL)
JUDGE

August 26, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No