

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

C.R. No.5933 of 2016 (O&M)
Date of Decision.15.09.2016

Rajiv Talwar

.....Petitioner

Vs

Arvinder Kumar and others

.....Respondents

Present: Mr. Prateek Sodhi, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-defendant No.1 is aggrieved of the impugned order whereby the application under Order 9 Rule 13 CPC for setting aside of the ex parte judgment and decree dated 15.09.2011 has been dismissed.

Mr. Prateek Sodhi, learned counsel appearing for the petitioner submits that the respondent-plaintiff had filed a suit for specific performance of agreement to sell dated 22.09.2003 in respect of the suit property as well as challenging the sale deed dated 21.10.2003 executed by defendant Nos.1 to 3 in favour of defendant No.4. He submits that the petitioner-defendant No.1 was never served in the aforementioned suit. The case set out by the plaintiff was that the petitioner-defendant No.1, Rajiv Kumar Talwar had entered into agreement to sell dated 17.07.2003 in favour of respondent-plaintiff after accepting earnest money of ₹60,000/- through his attorney Satwant Kaur and the target date was 14.08.2003. Satwant Kaur through whom the aforementioned agreement to sell had been executed by the petitioner-defendant No.1, nominated her husband Avtar Singh son of Puaran Singh as her special power of attorney vide power of

attorney dated 15.09.2003. In fact, there was no power of sub-delegation or

appointing any agent.

No doubt, the petitioner-defendant No.1 had put in appearance before the trial Court on 04.05.2004 but he was assured by the counsel that he need not worry about the trial of the suit and will be called as and when his presence required but the counsel did not inform him. He also relies upon the ratio decidendi culled out in the judgment of Hon'ble Supreme Court in **Rafiz and another Vs. Munshi and another AIR 1981 SC 1400.** All these factors have not been taken into consideration by the Courts below, thus, urges this Court for setting aside of the orders under challenge.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that factum of appearance through counsel on 04.05.2004 in the suit filed on 27.03.2004 is not disputed. No explanation has come forward as to why the petitioner had not contacted his counsel to enquire about pendency of the suit. Relationship between the client and the advocate is fiduciary in capacity and entire blame cannot be fastened upon the lawyer. It is solemn duty of the client to also enquire about the factum of the suit, much less, contact his counsel regarding the trial or defending of the allegations in the plaint. The ex parte judgment and decree had been rendered on 15.09.2011. Even explanation of acquiring knowledge is not probable. Once the petitioner-defendant No.1 was aware of the ex parte proceedings, the application was wholly barred by limitation as he was aware of the pendency of the suit, rightly so, the Courts below has not accepted the version/contention in the application.

I do not find any reason to differ with the orders under challenge as there is no illegality and perversity, much less, no ground for

interference is made out. The revision petition is dismissed.

September 15, 2016

Pankaj*

Whether reasoned/speaking

Whether reportable

Yes

No

(AMIT RAWAL)
JUDGE