

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

C.R. No.74 of 2016

Date of Decision.04.02.2016

Aalam

.....Petitioner

Vs.

Jaikam and others

.....Respondents

Present: Mr. Amit Jain, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The revision petition is at the instance of the plaintiff whose ex parte decree obtained in the year 2006 was set aside. It was a suit for specific performance filed in the year 2003 and after the contesting defendants were attempted to be served through court notice and when the service was not effected, the Court had ordered publication. The decree was passed in the year 2006 for directing the execution of the sale to be done within two months. However, the plaintiff waited for another two years before putting the decree in execution and appears to have also obtained the sale deed through the court representative. The application was filed in the year 2009 by the defendants contending that they came to know about the decree only on 12.11.2009 and they had filed the application immediately within 30 days from then on.

2. The contention by the plaintiff was that the application was barred by limitation, for it was the decree date which must have been relevant for setting aside the ex parte decree and an application filed

more than 30 days from the said date was beyond time. It was also the contention of the plaintiff that the allegations regarding how the defendants came to know about the decree were vague and no person had been examined to vouch for the assertion that they were informed through some person about the decree being passed.

3. The issue regarding limitation is wrongly placed by the counsel, for only if there is service personally on any of the defendants, the application would require to be filed within 30 days from the date of decree. Where there was no actual service, it is the date of knowledge which is relevant for setting aside the ex parte decree and if he discloses that knowledge by a third party, the application shall be filed within 30 days from such date of knowledge. The contention that averments were vague, must be tested in the light of how the plaintiff has conducted himself and if he has taken the decree in the year 2006 and waited for two years to secure the sale deed, it surely shows something was lacking from the plaintiff himself. The suit for specific performance must contain readiness and willingness on the part of the plaintiff not merely prior to the institution of the suit, but the statutory requirement must be fulfilled at all stages viz; at the time of institution, during the pendency and till execution of the sale deed is completed.

4. If the Court below has exercised its discretion and allowed for the ex parte to be set aside, I will not find it to be an occasion to recall that order. The order passed already is confirmed and the revision petition is dismissed.

(K. KANNAN)
JUDGE

February 04, 2016

Pankaj*