

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7621 of 2016

Date of Decision: November 21, 2016

Pritpal Singh

...Petitioner

Versus

Surinderpal Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Rajan Bansal, Advocate,
for the petitioner.

Mr.Vaibhav Narang, Advocate,
for the caveator.

AMIT RAWAL, J. (Oral)

Notice of motion.

Mr.Vaibhav Narang, Advocate, who is on the caveator, accepts
notice on behalf of the respondent.

Petitioner-plaintiff is aggrieved of the impugned order,
whereby the application filed under Order 9 Rule 13 CPC for setting-aside
the ex-parte judgment and decree dated 4.3.2011, has been allowed.

Mr.Rajan Bansal, learned counsel for the petitioner-plaintiff
submits that the suit for specific performance of the agreement to sell dated
23.2.2007 was filed against the respondent-defendant by giving the address
reflected in the agreement to sell. However, during the course of
proceedings of the suit, address of Bombay was given by submitting the
registered cover. The same came back with the report "refusal", thus, there
was intentional and willful refusal and the application under Order 9 Rule
13 CPC was suffering from not only illegality but also lacking cogent
reasons as respondent-defendant had acquired the knowledge way back, in

essence it was also barred by law of limitation. The alleged acquisition of the knowledge of the proceedings from the sister-in-law is, thus, a coined story, much less is not backed by any rationale. All these factors have not been taken care. Even in the cross-examination, this fact was confronted, but it was not emphatically denied and, therefore, the Court should have dismissed the application. Even while allowing the application, the respondent-defendant has not been put to any terms and conditions as per the provisions of Order 9 Rule 13 CPC, at the best the costs.

Mr.Vaibhav Narang, learned counsel for the respondent-defendant submits that the address given in the suit reflected in the ex-parte judgment and decree which reads as under:-

“Sh.Surinder Pal Singh Sadana son of S.Satpal Singh Sadana,
resident of 100 ft.Road, East Mohan Nagar, Amritsar.”

This is not the address as per the provisions of Order 7 Rule 1 (c), where there has to be a specific address with regard to the parentage, house number and the place of residence. In the absence of the same, the petitioner-plaintiff managed to procure the ex-parte proceedings, much less ex-parte judgment and decree. No harm would be caused to the petitioner-plaintiff in case the parties are given adequate opportunity to contest the case. He is not averse to imposition of any terms and conditions with regard to the expeditious disposal of the suit.

As regards the costs, he submits that no doubt the trial Court has not imposed any costs, which is requirement of law as per Order 9 Rule 13 CPC, but is open to any terms and conditions which this Court may deem it appropriate.

I have heard the learned counsel for the parties, appraised the

paper book and of the view that the address given in the plaint is not in consonance with the provisions of law as noticed above. There has to be specific address regarding parentage, house number and place of residence. Furnishing of registered cover to effect service upon the respondent at a different address without furnishing correct address in the Court is an unilateral act of the plaintiff and the resultant effect of the same cannot be looked into in favour of the plaintiff. There has to a specific order calling upon the plaintiff to furnish correct address. The reasons recorded by the trial Court in setting-aside the ex-parte judgment and decree are most genuine and reasonable, much less innocuous and cannot be said to be onerous.

No doubt, the suit aforementioned was instituted way back on 23.2.2010, almost six years back and while passing the impugned order, no costs has been imposed. I deem it appropriate to impose costs of ₹25,000/- to be paid to the counsel for the petitioner-plaintiff in the High Court. Moreover, since the suit has been restored back to its original number, the present revision petition is disposed of by issuing directions to the trial Court to dispose of the suit as expeditiously as possible, perfectly within a period of one year by affording 4-4 effective opportunities to the parties. The costs shall be the condition precedent before proceedings with the suit.

For the foregoing reasons, while upholding the impugned order, the revision petition stands disposed of.

November 21, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No