

**C.M.No.11260-CII-2016 in/and
CR No.8586 of 2015 (O&M)**

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**C.M.No.11260-CII-2016 in/and
CR No.8586 of 2015 (O&M)
Date of decision:04.08.2016**

Smt. Maya Devi

... Petitioner

Vs.

Raj Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pankaj Mehta, Advocate
for the petitioner.

Mr. Ram Kumar Saini, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

C.M.No.11260-CII-2016

For the reasons stated in the application, duly supported by an affidavit, order dated 23.04.2016 is recalled and the revision petition is restored to its original number.

C.M. stands allowed.

With the consent of learned counsel for the petitioner, the revision petition is taken on board for hearing today.

CR No.8586 of 2015 (O&M)

Petitioner-defendant is aggrieved of the condition imposed in the impugned order dated 07.11.2015, whereby, ex parte proceedings dated 14.02.2013 and ex parte judgment and decree dated 12.09.2014 have been set aside subject to depositing 50% of the disputed amount of the agreement

in dispute.

Mr. Pankaj Mehta, learned counsel appearing on behalf of the petitioner-defendant submits that he was not served in the aforementioned suit seeking specific performance of the agreement to sell. The trial Court did not grant the discretionary relief under Section 20 of the Specific Relief Act but ordered for refund of earnest money. Agreement to sell was empathetically denied, therefore, the aforementioned condition ought not to have been imposed, thus, same is unnecessary, requires to be modified.

Mr. Ram Kumar Saini, learned counsel appearing on behalf of respondent No.1 submits that the defendants were served in the aforementioned previous suit and despite that proceeded against ex parte on 14.02.2013 and almost more than 1 ½ years, the case remained pending but no attempt was made for setting aside the ex parte order resulting into passing of ex parte judgment and decree dated 12.09.2014. An application under Order 9 Rule 13 read with Section 151 Code of Civil Procedure was filed on 19.03.2015. Though the application was delayed, yet the Court below allowed the application subject to imposition of costs, thus, there is no illegality and perversity in the impugned order.

I have heard learned counsel for the parties and appraised the paper book.

The language of Order 9 Rule 13 CPC leaves no manner of doubt that the Court upon certain terms can set aside the ex parte judgment and decree. The respondent-plaintiffs have obtained a decree in their favour yet suffered a wrath of delay at the instance of the petitioner.

In view of the aforementioned facts, imposition of costs of deposit of 50% of the disputed amount is *pari-materia* to the provisions of Order 38 Rule 5 CPC, much less, in consonance with the provisions of Order 9 Rule 13 CPC and cannot be construed as onerous and against the interest of the petitioner.

For the foregoing reasons, I am of the view that there is no illegality and perversity in the impugned order, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

**(AMIT RAWAL)
JUDGE**

August 04, 2016
savita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No