

In the High Court of Punjab and Haryana at Chandigarh

CM No. 23444-CII of 2017 in/and
CR No. 1432 of 2013(O&M)
Date of Decision: 2.11.2017

Smt. Rashmi Seth and others

---Petitioners

versus

M/s Kunj and Company Private Limited Company and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. P.S.Kanwar, Advocate
for the petitioners

None for respondent Nos. 3 and 4

Rekha Mittal, J.

CM No. 23444-CII of 2017

Prayer in this application is for recalling order dated 21.8.2017 whereby Civil Revision No. 1432 of 2013 against respondent Nos. 1 and 2 has been dismissed.

Counsel for the applicants-petitioners has submitted that due to mistake on the part of Clerk of counsel for the applicants-petitioners, orders passed by this court for supply of complete set of revision petitions could not be complied with. It is further submitted that the applicants-petitioners should not be allowed to suffer on account of mistake of their counsel or Clerk working in the office of their counsel.

I have heard counsel for the applicants-petitioners and perused

the paper book of Civil Revision No. 1432 of 2013.

The main petition was listed for the first time on 2.4.2013 and was adjourned on a number of occasions at the request of counsel for the petitioners. On May 25, 2015, notice of motion was issued to respondents No. 3 and 4. Later, vide order dated 19.1.2016, notice of motion was issued to respondent Nos. 1 and 2 for 11.5.2016, reads as follows:-

“Counsel for respondents No. 3 and 4 has submitted that respondents No. 1 and 2 are contesting respondents and respondents No. 3 and 4 are proforma respondents.

Notice of motion to respondents No. 1 and 2 for 11.5.2016.”

Notice to respondents No. 1 and 2 could not be issued for 11.5.2016, 27.8.2016, 27.1.2017, 21.8.2017 because of failure of the applicants-petitioners to comply with order dated 11.5.2016. On April 19, 2017, the applicants were given last opportunity for compliance with a clear stipulation that in case the order is not complied with, petition against the said respondents (respondents No. 1 and 2) shall be deemed to be dismissed. As the petitioners failed to comply with order dated 11.5.2016 despite number of opportunities granted for the purpose spreading over a period of more than one year, finding no alternative, petition against respondents No. 1 and 2 was ordered to be dismissed. A relevant extract from order dated 21.8.2017, reads as follows:-

“Counsel for the petitioners has failed to comply with previous order for service of respondents no.1 & 2. On April 19, 2017 order passed by this Court reads as follows:-

“Learned counsel for the petitioners has still not complied with the order dated 11.05.2016 and seeks time to comply with the same.

One but last opportunity is given for compliance. Posted to 21.08.2017.

It is made clear that in case the order is not complied with the petition against the said respondents shall be deemed to be dismissed.”

In view of the above, petition against respondents no.1 & 2 stands dismissed. Its adverse affect qua petition against respondents no.3 & 4, stated to be proforma, would be seen at the time of disposal of the petition on merits.

Registry is directed to append a note on memo of parties that petition against respondents no.1 & 2 has been dismissed.

Adjourned to 02.11.2017 for arguments.”

As the applicants-petitioners failed to comply with direction of this court despite various opportunities including last opportunity granted for the purpose, I find myself unable to be persuaded with the submissions made by counsel for the applicants-petitioners that the order dated 21.8.2017 is liable to be modified/recalled. As a consequence, application filed by applicants-petitioners for recalling order dated 21.8.2017 is dismissed.

Main case

The present petition directs challenge against order dated 11.8.2009 passed by the Additional Civil Judge (Senior Division), Amritsar dismissing petition against sale and confirmation of sale of property in dispute.

Perusal of the amended Memo of Parties would reveal that in the case real contest is between the petitioners and respondent Nos. 1 and 2

namely counter claimant/decreed holder and auction purchaser. As the petition against respondent Nos. 1 and 2 has been dismissed, nothing survives for consideration of this court. Resultantly, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

2.11.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No