

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 5152 of 2017 (O&M)

Date of decision : October 09, 2017

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Surjit Singh Garg

.....Petitioner

Versus

Amrik Singh and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Brijender Kaushik, Advocate for the petitioner.

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RITU BAHRI, J.

Present revision petition has been filed for setting aside the orders dated 28.2.2017 (Annexure P-1) passed by Additional Civil Judge, Senior Division, Ambala and 4.5.2017 (Annexure P-2) passed by Additional District Judge, Ambala, whereby application for setting aside ex parte judgment and decree dated 27.9.2013 (Annexure P-3) has been rejected.

A civil suit for possession by way of specific performance of the agreement dated 15.3.2007 was filed by Amrik Singh and Ravi Kumar, plaintiffs-respondents against Surjit Singh, petitioner-defendant, in which initially the petitioner-defendant appeared and filed written statement. Thereafter, despite notice issued to the petitioner-defendant, he did not appear on 6.3.2012 and as such was proceeded against ex parte. After

taking ex parte evidence of the plaintiffs-respondents, the suit was decreed with costs vide judgment and decree dated 27.9.2013 by the Court of Civil Judge (Junior Division), Ambala.

On 4.12.2013, petitioner-defendant filed an application under Order 9 Rules 7 & 13 of CPC read with Section 151 CPC for setting aside ex parte order dated 06.03.2012 and ex parte judgment and decree dated 27.9.2013. It was averred in the application that the suit was being contested between the parties but the respondents-plaintiffs obtained the ex parte judgment and decree by fraud. It was also averred that the alleged agreement to sell was totally vague and silent about khasra number, plot number and its dimensions. It was further averred that Sh. Didar Singh was co-owner in the suit property with the petitioner-defendant, who unfortunately died on 23.8.2011. The petitioner-defendant could not contact his counsel within time and when he contacted his counsel, he was informed that there was no need to appear in the case being of civil nature and the counsel assured the petitioner-defendant that he would inform him as and when he would be required in the case. It was further averred that the petitioner-defendant received a registered notice vide postal receipt dated 8.11.2013 from Shri J.S Rathore, Advocate, then it came to his notice that the suit had been decreed against him vide judgment and decree dated 27.9.2013. He immediately contacted his counsel and applied a copy of ex parte judgment and decree dated 27.9.2013 and thus claimed that application for setting aside the ex parte judgment and decree was within limitation time.

Vide order dated 28.2.2017, Additional Civil Judge (Sr. Division), Ambala dismissed the application by observing that there was no

sufficient reason to set aside the decree dated 27.9.2013 pronounced after more than one and a half year of the passing of ex parte order dated 6.03.2012 as it itself shows that the petitioner-defendant had other cases in the court and he was writing letters to the offices of DC and SP and must have been following them but he did not bother about inquiring his civil case pending in the Court, neither through his counsel nor by himself for more than one and a half year or more precisely to say more than 20 months as it was on 8.11.2013, he alleged to come to know about the ex parte order against him. The petitioner-defendant himself did not bother to appear despite service and was not vigilant about his rights. It was held that the petitioner-defendant was not successful in satisfying this Court to the effect that he was prevented by any sufficient cause from appearing in the Court. Hence vide order dated 28.2.2017, Additional Civil Judge (Sr. Division) Ambala dismissed the application of the petitioner-defendant. While dismissing the application, it was further observed that the plea of the petitioner-defendant that the decree was obtained by way of fraud as father of the petitioner-defendant got two sale deeds registered in the name of the respondents-plaintiffs for plots of 100 sq yard each before the date fixed for the registry by him qua the agreement executed by him with the respondents-plaintiffs and respondents-plaintiffs got the decree ex parte without disclosing this fact that there are two sale deeds in their favour regarding two plots is concerned, same is not tenable as the respondents-plaintiffs in their plaint have mentioned about the said two sale deeds got executed by Didar Singh for two plots with the respondents-plaintiffs as they needed the plots and, therefore, there is no such concealment by the respondents-plaintiffs as to the said two sale deeds. Moreover, there is no

recital in the said two sale deeds by Didar Singh that same were got executed in lieu of the agreement so executed by the petitioner-defendant in their favour or anything that previous agreement stood cancelled. Moreover, the execution of the agreement in dispute was admitted to have been executed by the petitioner-defendant in his written statement and in the above backdrop, the application under order 9 Rule 13 CPC was dismissed.

On appeal, the District Judge, Ambala observed that the application under Order 9 Rules 7 and 13 CPC was filed in December 2013. On the very next date i.e on 22.1.2014, reply to the application was filed by the respondents-plaintiffs. Thereafter, ten opportunities were granted to the parties but the matter was not argued. In the meantime, an application for staying the operation of the impugned judgment and decree was filed by the petitioner-defendant which was also dismissed on 27.8.2014. The matter then again remained pending up to January 2015, when the petitioner-defendant chose to change his counsel. The matter again remained pending for a long time and on 17.1.2016, an application under Order 6 Rule 17 CPC was filed by the petitioner-defendant for amendment of the petition under Order 9 Rules 7 and 13 CPC. Counsel for the respondents-plaintiffs suffered a statement that they did not want to file any reply, upon which, the application was allowed. The matter then again remained pending for arguments for a number of dates. Eventually, the matter was argued and the impugned order dated 28.2.2017 was passed. While dismissing the appeal on 4.5.2017, District Judge, Ambala observed that there were no disputed questions of fact which required framing of issues.

After going through order dated 28.2.2017 (Annexure P-1) passed by Additional Civil Judge, Senior Division, Ambala and order dated

4.5.2017 (Annexure P-2) passed by Additional District Judge, Ambala, no case is made out warranting interference of this Court. There is no infirmity or illegality in the orders passed by both the Courts below.

In view of all that has been discussed above, present revision petition is dismissed.

October 09, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No