

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5286 of 2017 (O&M)
Date of Decision:11.08.2017

Bhupinder Kaur

...Petitioner

Versus

Inderjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurmeet Singh, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Petitioner-defendant has filed this revision petition challenging the order dated 16.05.2015 affirmed in appeal vide order dated 25.05.2017.

Plaintiff had filed a suit for specific performance of agreement to sell. Defendant-petitioner engaged Sh. S.D.S. Kalirao, Advocate. He started appearing on behalf of the defendant and took as many as 7 adjournments. Thereafter, he stopped appearing.

The Court after appreciating the evidence available on the file decreed the suit on 20.09.2012. It was in 2014 when application for setting aside ex parte decree was filed. It was pleaded in the application that defendant had engaged Sh. S.D.S. Kalirao, Advocate. It was asserted that she is an old age lady and the counsel did not inform her about the proceedings of the case. She further stated that she came to know of the decree when in pursuance to the decree, the plaintiff tried to take possession

of the property. Learned trial Court after appreciating the facts available on the file, dismissed the application. It was noticed that the petitioner had not even filed a written statement and her defence was struck off on 17.02.2010. Learned Court further held that the petitioner was thoroughly negligent in prosecuting the case.

Appeal filed by the petitioner was also ordered to be dismissed. Learned first Appellate Court held that Sh. S.D.S. Kalirao, Advocate after filing his Power of Attorney (Vakalatnama) on behalf of the defendant on 02.09.2009, got the case adjourned to 17.09.2009, 15.10.2009, 03.11.2009, 27.11.2009, 21.01.2010 and 17.02.2010 for filing written statement. However, no written statement was filed. Ultimately, on 17.02.2010, the defence of the defendant-petitioner was struck off.

Learned Court further found that defendant has not been able to prove any sufficient cause for setting aside the ex parte order. The Court further found that although, the expression 'sufficient cause' has been interpreted liberally, however, the Court should not adopt an approach, which would result in setting aside every ex parte decree passed by the Court.

I have heard the learned counsel for the petitioner at length.

Counsel for the petitioner has not been able to point out any error in the approach of the Courts below. The orders passed by the Courts below are supported by facts. The facts as noticed above have not been disputed.

It is clear from the facts noted above that defendant-petitioner

was served in the main suit. Defendant-petitioner also engaged a lawyer. That lawyer appeared on as many as 7 hearings. The suit was decreed in the year 2012. The present application for setting aside ex parte decree has been filed in the year 2014. Still further, defendant-petitioner has not been able to prove sufficient cause, which is *sine qua non* for setting aside ex parte decree. Both the Courts have examined the assertions made by the parties and have concurrently found that the defendant-petitioner has failed to prove any sufficient cause enabling the Courts to set aside the decree.

In view of the above, I do not find any reason to interfere with the concurrent finding of fact arrived at by the Courts below.

Revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

11.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No