

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.580 of 2017

Date of decision: 30.01.2017

Rajan Sharma

... Petitioner

Vs.

Harbhajan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned order dated 12.12.2016 passed by the learned trial Court, whereby application under Order 9 Rule 9 of the Code of Civil Procedure (for short 'CPC') for setting aside the order dated 17.09.2012 and application under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex-parte judgment and decree dated 16.10.2012, moved on behalf of Harbhajan Singh-defendant No.1, respondent No.1 herein, were allowed, plaintiff has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

It has gone undisputed before this Court that the petitioner filed suit for possession by way of specific performance of agreement to sell dated 01.02.2006. During pendency of the suit, defendant No.1-respondent Harbhajan Singh was proceeded against ex-parte vide order dated 17.09.2012. Thereafter,

suit of the petitioner was decreed ex-parte, vide judgment and decree dated 16.10.2012. Having come to know about passing of the decree, defendant No.1-respondent Harbhajan Singh moved the application under Order 9 Rule 9 CPC for setting aside the order dated 17.09.2012, whereby he was proceeded against ex-parte. He also moved an application under Order 9 Rule 13 read with Section 151 CPC for seeking setting aside of the ex-parte judgment and decree dated 16.10.2012. Notice of the applications was issued to the plaintiff-petitioner. Appropriate issues were framed by the learned trial Court. Parties led their respective evidence. Applicant-respondent No.1 Harbhajan Singh appeared as AW1. He also examined Paramjit Kaur as AW2, Sham Lal as AW3 and Pankaj Kumar as AW4 in his evidence. He tendered into evidence certified copies of documents Ex.P1 to Ex.P22 and Ex.P24 to Ex.P35. Petitioner appeared as RW1 and tendered into his evidence copies of order as Ex.R1 and Ex.R2.

After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that defendant No.1 Harbhajan Singh has shown sufficient cause for setting aside the order dated 17.09.2012, whereby he was proceeded against ex-parte. Accordingly, his application was allowed. Consequently, the ex-parte judgment and decree were also set aside, accepting the prayer made by the applicant-defendant No.1 under Order 9 Rule 13 read with Section 151 CPC by the learned trial Court, while passing the impugned order.

A bare perusal of the impugned order would show that the learned trial Court has recorded cogent findings, which have been found duly supported by sound reasons. Since the impugned order is based on true facts of the case as

well as on sound principles of law, the same deserves to be upheld.

Further, plaintiff has been duly compensated by payment of reasonable costs. Learned trial Court was well within its jurisdiction to pass the impugned order, which has not been found suffering from any illegality and the same deserves to be upheld, for this reason also.

The relevant observations made by the learned trial Court in paras 13 and 14 of the impugned order, which deserve to be noticed here, read as under: -

*“It is opined that the present suit is for possession by way of specific performance of agreement to sell. While filing the written statement, the defendant/applicant categorically submitted that the case is based on forged and fabricated documents with a view to adduce a false claim on the basis of certain false entries regarding the payment. During cross-examination of plaintiff Rajan Sharma, it also comes out that a complaint under section 420, 467, 468, 471 read with section 120-B IPC was filed by Harbahajan Singh also. I am of the opinion that where valuable rights of a party are involved, then the principle of natural justice embody the right to every person to represent his interest to the court of justice. Pronouncing a judgment which adversely effects the interest of the party to the proceed who was not given a chance to represent his case is unacceptable under the principle of natural justice. On this point, I rely upon the law laid down by Hon'ble Supreme court cited as **2012 (10) Supreme court Page 476**. The Hon'ble Supreme court also held that even if the party was found to be negligent, the*

*other side could have been compensated by cost but the proper opportunity of hearing must be granted. The Hon'ble Punjab & Haryana High court held in **2002(4) RCR Civil Page 13** that no prudent person in normal course would like to ignore court proceedings in relation to any immovable property as it could have serious consequences like dispossession of such person from the property. The present case is also for possession on the basis of agreement to sell which is although admitted by the defendant but wherein he denies the entry regarding payment of money. The suit was decreed on 16.10.2012 and the present application was filed on 27.11.2012. It cannot be said that present application is filed just to delay the proceedings of execution of the decree dated 16.10.2012. Even if the court comes to the conclusion that there is some element of negligence, yet it cannot be ignored that it is gross or irreparable loss as to dis-entitle the party from vindicating his right.*

In the light of above discussion, I am of the considered opinion that even if there is any negligence either on the part of the applicant or on the part of the Advocate who did not appear on the hearing fixed for plaintiff's evidence, do not dissent the applicant to further participate in the proceedings by setting aside the ex parte decree. For the inconvenience suffered by the plaintiff/respondents, they can be well compensated in terms of money. Finding sufficient grounds for setting aside ex parte judgement and decree dated 17.9.2012 the issue No.1 is decided in

favour of the applicant and against the respondent.”

When confronted with the abovesaid findings, learned counsel for the petitioner could not point out any illegality in the findings recorded by the learned trial Court, while passing the impugned order. It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. It is also true that the Courts must make an endeavour to decide the lis between the parties on merits, after granting due opportunity to both the parties to put up their best case before the Court, instead of deciding any case on the basis of technicalities alone. Having said that, this Court feels no hesitation to conclude that learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in the impugned order dated 12.12.2016 passed by the learned trial Court, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

30.01.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No