

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 6367 of 2017

Date of decision:- 15-11-2017

Roshan Lal

...Petitioner

versus

Suresh Kumar

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vinod Kumar Gupta, Advocate
for the petitioner.

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 24.03.2017 (Annexure P-3) passed by the learned Civil Judge (Sr. Divn.) Yamuna Nagar at Jagadhari vide which the application under Order 9 Rule 13 CPC read with Section 151 CPC for setting aside ex parte order dated 15.04.2011 whereby the petitioner was proceeded against ex parte and for setting aside ex parte judgment and decree dated 05.04.2013 whereby the suit of the defendant-respondent was decreed ex parte against the petitioner, was dismissed.

Brief facts of the case as per plaintiff-respondent, petitioner-defendant being owner in possession of the suit property, detailed in the head note of the plaint, had entered into agreement to sell the same on 28.07.2008 with respondent for a total sale consideration of Rs.6,02,000/- and the respondent paid the total sale consideration to the petitioner at the time of execution of agreement to sell in the presence of witnesses. A receipt of this was also executed. The petitioner had put the respondent into actual and physical possession of the suit property. As per the condition of

the agreement dated 28.07.2008, respondent was at liberty to get the sale deed executed and registered after the service of one month notice to the petitioner for execution and registration of the sale deed in his favour at the cost and expenses of the respondent. The respondent requested the petitioner many times but the petitioner was putting off the matter on one pretext or the other. He has also served the petitioner with registered AD/UPC notice dated 17.01.2011 requesting him to execute and register sale deed within one month after the receipt of the notice in favour of the respondent and fixed the date as 25.02.2011. On the date, the respondent remained in the office of Joint Sub Registrar, Radaur along with expenses for the execution and registration of the sale deed in his favour and waited the petitioner for the whole day but he did not turn up. Thereafter, respondent filed a suit for specific performance and none appeared on behalf of the petitioner despite service and accordingly, he was proceeded ex parte, vide order dated 15.04.2011. Since the willing and readiness of the respondent was fully established on record as appeared in the office of Joint Sub Registrar, Radaur along with miscellaneous expenses but petitioner did not turn up. Respondent, thereafter marked his presence vide affidavit Ex P9 attested by Joint Sub Registrar, Radaur. The suit of the respondent was decreed ex parte directing the petitioner to execute and get register the sale deed dated 28.07.2008 in favour of the respondent within a period of one month from the date of receipt of certified judgment.

Thereafter, petitioner filed an application on 16.01.2014 under Order 9 Rule 13 read with Section 151 CPC for setting aside ex parte judgment and decree dated 05.04.2013 and ex parte order dated 15.04.2011

on the ground that he has never been served in the suit.

The application filed by the petitioner was dismissed on 24.03.2017 and hence the present revision petition.

Learned counsel while relying upon a judgment of this Court in a case of *Ajit Singh vs. Santokh Singh, 2002(4) R.C.R (Civil) 13* to contend that since no service was ever affected upon the petitioner, the impugned decree and ex-parte order should not have been passed.

A bare perusal of impugned order shows that the plea of petitioner that he was not served and was not in knowledge of the impugned judgment and decree, was held to be not believable as the process server has given his report Ex R-1 and further the respondent has informed the Court that he had moved an application Ex R5 in the case titled as Surender Kumar v. Roshan Lal for becoming a party to the suit on the basis of impugned ex parte judgment and decree dated 05.04.2013 and the application was moved on 22.05.2013 when the petitioner had been appearing in the said case. Thus, the ex parte judgment and decree dated 05.04.2013 came to his knowledge in May, 2013 but the same has not been challenged within a period of 30 days from the date of his knowledge. Further the petitioner in his cross examination himself admitted his signatures on the agreement as well as receipt dated 28.07.2008.

Thus, in view of the above factual position, one thing is clear that the report of refusal R.W.1 has rightly been taken in to consideration as the process server himself appeared in the present proceedings and has proved his report by giving evidence in detail that he confirmed the identity of the petitioner not only from son of the respondent but also from the

people of the vicinity.

The above said grounds were sufficient enough to pass the impugned order. Accordingly, the revision petition is dismissed being devoid of merits.

15-11-2017

G Arora

(*RITU BAHRI*)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>