

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8572 of 2016
Date of Order: 21.08.2017

Amar Singh

..Petitioner

Versus

Lekh Raj and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Kumar Panwar, Advocate,
for the petitioner.

ANIL KSHETARPAL, J (Oral)

Defendant No.1-petitioner has filed present revision petition, against order dated 28.04.2015, affirmed in appeal, vide judgment dated 26.09.2016.

Plaintiff filed a suit for specific performance of agreement to sell dated 05.12.2007. Defendant was served. He appeared in the Court. Thereafter, defendant stopped appearing in the suit. Defendant was, hence, proceeded against ex-parte on 25.04.2011. Ultimately the Civil Court passed an ex-parte decree on 03.05.2012.

Defendant No.1-petitioner filed an application for setting aside an ex-parte decree on 15.09.2012. Defendant-petitioner pleaded that there was a compromise between the parties and Rs.96,000/- was paid to the plaintiff.

Learned trial court after giving opportunity to the parties to lead evidence, recorded a finding that the defendant-petitioner has not been able to prove the story of compromise. The learned Court after discussing

the evidence available on the file, dismissed the application.

Defendant No.1-petitioner filed first appeal, which has also been ordered to be dismissed, vide judgment dated 26.09.2016.

I have heard counsel for the petitioner at length and with his able assistance gone through the record.

Learned counsel for the petitioner has submitted that the approach of the Court in setting aside an ex-parte decree should be liberal and the party should be granted opportunity to contest the litigation on merits. He has further submitted that the courts have not appreciated the evidence available on the file.

No doubt, the Courts have always been taking a liberal view for setting aside ex-parte proceedings. In case of a ex-parte decree, a right vest with the decree holder. Ex-parte decree cannot be set aside just on the asking of the party. The decree can only be set aside, if the party proves on the record that there was some sufficient reason for non-appearance. In this case, the defendant-petitioner had taken a plea that there was some settlement between the parties during the pendency of the suit. Both the Courts have appreciated the evidence available on the record and have concurrently found that defendant-petitioner has failed to prove that there was some settlement.

It is not in dispute that the defendants were served in the suit. Defendants appeared and thereafter stopped appearing. In these circumstances, it is not possible to hold that there was some genuine cause for defendant No.1 to stop appearing in the suit.

Learned counsel for the petitioner further submitted that the evidence led by the petitioner has not been properly appreciated.

I have gone through the judgments passed by the Courts below. Both the Courts have discussed the evidence in detail. The trial Court did not decide the application under Order 9 Rule 13, just on the basis of application and reply. The learned trial Court framed issues and gave opportunity to the parties to lead evidence and prove their assertions. Once the petitioner has failed to prove the case set up in the application, the Courts below have rightly dismissed the application.

In view of the discussion made above, I do not find any reason to interfere with the orders passed by the Courts below. The Revision petition is dismissed.

August 21, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No