

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2771 of 2015

Date of Decision: December 10, 2018

Jasbir Singh

...Petitioner

Versus

Jaspal Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Himanshu Sharma, Advocate,
for the petitioner.

Mr. Yogesh Goel, Advocate,
for the respondent.

AMIT RAWAL, J.

The present revision is directed against the impugned order dated 14.11.2014, whereby the application under Order 9 Rule 13 CPC for setting-aside the ex-parte judgment and decree dated 27.01.2004 seeking specific performance of the agreement to sell dated 14.11.1999, has been allowed.

Mr. Himanshu Arora, learned counsel for the petitioner-plaintiff submitted that in view of the receipt of the summons served at the address given in the suit, respondent-defendant had put in appearance through counsel and filed power of attorney and thereafter absented, which resulted into ex-parte decree. The defendant moved an application dated 26.08.2008 for setting-aside the ex-parte judgment and decree dated 27.01.2004, i.e., after four years, for, sale deed as a consequential of the judgment and decree has already been executed. The courts below have not

noticed the aforementioned facts as on 21.09.2000 Shri S.S.Garcha, Advocate filed Vakalatnama. Respondent-defendant has not been able to belie his signatures on the Vakalatnama through the testimony of any independent expert. It is nothing but an adoption of delaying tactics as the respondent-defendant had been watching the proceedings and waited for proper time to cause delay in the execution of the judgment and decree.

Mr. Yogesh Goel, learned counsel for the respondent-defendant supported the impugned order and submitted that the petitioner-plaintiff had not been able to substantiate the service effected on the respondent-defendant as Mr. S.S.Garcha Advocate was never engaged or authorized to submit any power of attorney purportedly signed by the defendant. A perusal of the zimni orders of the main suit shows that on 13.06.2000, munadi issued was received back duly effected and on 21.09.2000 Mr.S.S.Garcha Advocate filed Vakalatnama and the matter was adjourned to 14.11.2000, 18.12.2000 and 13.01.2001 for filing the written statement. However, on the adjourned date, i.e., 28.02.2001, nobody appeared and the defendant was proceeded ex-parte. It was an act of collusion between the plaintiff and Mr. Garcha as in cross-examination he admitted that he did not know on whose behalf he was appearing in the court of the concerned Judge. No harm and prejudice would be caused to the respondent-plaintiff if sometime line is fixed for adjudication of the suit.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioner-plaintiff. The best possible evidence for the respondent-defendant was to belie his signatures on the Vakalatnama. Ignorance qua appearance on behalf of a particular person as

reflected in the testimony of the Advocate. who filed the Vakalatnama, would pale into insignificance. Mr.S.S.Garcha RW-1 identified his signatures on the Vakalatnama Ex.PX.

Respondent-defendant has failed to give reasons for non-appearance, particularly when the address was given in the suit. The factum of munadi has also not been denied. Despite availment of numerous opportunities, the court below had no other option but to proceed the defendant ex-parte. Had Mr. Garcha withdrawn his vakalatnama, there would have been reason for fresh notice. All these factors have not been looked into in correct perspective by the court below. By filing of application under Order 9 Rule 13 CPC after four years in the present case, adoption of delaying tactics is writ large. Even the sale deed through the court commissioner has been executed and the respondent-defendant-judgment debtor would not be knowing this fact.

For the reasons mentioned above, in my view the impugned order suffers from illegality and perversity. The same is hereby set-aside. Application under Order 9 Rule 13 CPC is dismissed. Consequently, revision petition is allowed.

December 10, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No