

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.3328 of 2015

Date of Decision:16.05.2018

Sharda (died) through LRs

...Petitioners

Versus

Vijay Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Pritam Saini, Advocate for the petitioners.
Mr.Nitin Jain, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Petitioners are in the revision petition against the order passed by the learned trial court, dismissing the application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte order passed by the learned trial court which has been affirmed in the appeal.

Both the courts have found that summons were sent to the defendants-petitioners were received back with the report of refusal. The report of refusal is dated 31.5.2005, whereas the suit was decreed on 8.4.2006. Even in the execution petition, summons were served on the defendants, but defendants did not chose to appear. In the execution petition, summons were again served on 30.1.2007, whereas application for setting aside ex parte judgment and decree was filed on 11.12.2009, although from the trial court judgment, it appears to have been filed on 17.2.2010. After considering the submissions of the petitioners-defendants, both the courts have found that neither the application for setting aside ex parte decree is bonafide nor it is within limitation. It has further been

noticed that no application for condonation of delay has been filed.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the orders passed by the courts below.

It is noticed that there were six judgment debtors, however, this revision has been filed only by one of the judgment debtors namely Smt.Sharda through her legal representatives.

Learned counsel for the petitioners has submitted that the courts below have over looked the fact that there is only one report of refusal with respect to five defendants. He has further submitted that the correctness of the report is doubtful.

This Court has examined the contention. All the six defendants were residents of same address. Initially summons were sent and as per report dated 31.5.2005, all the defendants refused to accept the summons. Once again summons were sent and there was another report of refusal dated 8.8.2005. Thereafter, local proclamation was ordered and carried out as per report dated 19.8.2005. The learned trial court has also noticed that Sh.Rakesh Kaushik, Advocate, appeared on behalf of the defendants, vide memo dated 19.8.2005 and sought adjournment for filing the written statement. The case was adjourned to 7.9.2005 and then to 8.10.2005 and thereafter adjourned to 22.11.2005. On 22.11.2005, Shri Rakesh Kaushik, Advocate, pleaded no instructions.

Still further, in the execution petition also, summons were sent and served on defendants No.2 to 7 and petitioner herein for 30.1.2007. Still neither any application for setting aside ex parte order was filed nor in the execution petition the judgment debtors chose to appear.

In view of the aforesaid discussion, it is proved that the defendants had knowledge of the proceedings but did not choose to appear. A valuable right has accrued in favour of the decree holder, who is trying to enforce the agreement to sell dated 4.3.2004. Hence, there is no ground to interfere with the impugned orders passed by the courts below.

Dismissed.

16.05.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No