

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R No.335 of 2017

Kikar Singh

....Petitioner

Versus

Shinder Pal and Ors.

....Respondents

Date of Order: 05.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sham Lal Bhalla, Advocate for the petitioner.

Mr. R.S. Chauhan, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Petitioner-plaintiff is aggrieved of the impugned order dated 04.11.2016 passed by learned Civil Judge (Jr. Division), Ludhiana whereby his application for restoration of the suit against defendant No.4, which was dismissed in default on 31.8.2015, has been dismissed.

Plaintiff filed the suit for possession by way of specific performance of agreement to sell dated 08.4.2011 executed by the defendant-Shinder Pal in respect of house measuring 300 sq yards comprised in Khasra No.35//1, Khata No.194/220 situated in the revenue estate of village Kakowal, Tehsil and District Ludhiana. On the basis of sale deed dated 21.2.1994, defendant entered into agreement for sale of said house with the plaintiff-petitioner for a total sale consideration of Rs.16 lacs.

Written statement is stated to have been filed on behalf of

respondent Nos.2 & 3.

Service of respondent No.4 could not be effected before the trial Court and thereafter the suit was dismissed against defendant-respondent No.4. Immediately thereafter the counsel for the plaintiff moved an application for restoration of the suit, which has been dismissed vide the impugned order.

Learned counsel for the petitioner submitted that the approach of the trial Court is based on surmises and conjectures. The address of defendant No.4 was correct but she was intentionally evading the service. He produced on record the summons issued to defendant No.4 and drew the attention of this Court of her real address, which is shown to be “R/o 3221 Shimla Colony, Kailash Nagar, Ludhiana instead of “3474, St No.11, New Gagandeep Colony, Near Kakowal Road, Tehsil and District Ludhiana”. He prayed for grant of last opportunity to file correct address as the presence of defendant No.4 is very essential for adjudication of the matter.

On the other hand, learned counsel for the respondent submitted that the impugned order has rightly been passed. The suit was filed on 4.5.2011 and the same was dismissed on 31.8.2015 against defendant No.4. The petitioner had not been able to effect service on the said defendant for long four years.

After hearing learned counsel for the parties and appraising the paper book, I find force in the submissions made by learned counsel for the petitioner. It is apparent that the address given in the suit was not correct one whereas the service of respondent No.4 has been effected through the summons showing correct address but there is no representation on behalf of respondent No.4.

In view of aforesaid reason, present petition is allowed. The impugned orders dated 04.11.2016 as also dated 31.8.2015 are set aside and one opportunity is granted to the petitioner to furnish correct address of defendant No.4 on which respondent No.4 has been served in revision petition, within a period of one week from the date of receipt of certified copy of this order. Petitioner shall also obtain dasti summons for this purpose.

April 05, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No