

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

**C.R. No.3714 of 2017 (O&M)
Date of Decision.21.05.2018**

Mohinder Kaur

...Petitioner

Vs

Tejinder Pal Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sushil Sharma, Advocate for
Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. Nitin Kant Setia, Advocate
for respondent No.1.

Mr. S.C. Pathela, Advocate for respondent No.3.
Mr. I.S. Parmar, Advocate
for respondent No.2.

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AMIT RAWAL J.(ORAL)

The petitioner-defendant No.1 is in revision petition against the impugned order dated 08.05.2017 whereby the application of defendant No.2 for setting aside the ex parte proceedings with no objection from the counsel for the plaintiff has been allowed.

The plaintiff instituted the suit for specific performance of agreement to sell dated 10.06.2009 pertaining to Booth No.5-G situated in Bhai Randhir Singh Nagar, Ludhiana by directing defendant No.1, Mohinder Kaur, Birinder Singh and Ludhiana Improvement Trust to get the sale deed executed in favour of the plaintiff on receipt of balance sale consideration with consequential relief of permanent injunction restraining defendant No.1 and 2 from alienating or transferring the property in any manner and employees/officials of the Improvement Trust from transferring the

suit property. In the aforementioned proceedings, defendant No.2 Birinder Singh one of the vendee being the authorized attorney of defendant No.1 approached the plaintiff to sell the property, therefore, alleged agreement to sell was entered into as per the terms and conditions. However, in the aforementioned suit, defendant No.2 was proceeded ex parte. When the application was submitted for setting aside the ex parte order, the plaintiff did not oppose.

Learned counsel appearing on behalf of the petitioner-defendant No.1 submitted that defendant No.2 has collusion with the plaintiff and it is in that circumstance, the plaintiff gave no objection, for, there is a clash of interest. Defendant No.2 is residing in America and never visited India, thus, the application for setting aside ex parte order was not maintainable. The trial Court ought to have examined and perused the application and accorded reasons as to whether there was forgery or perjury.

On the other hand, Mr. Nitin Kant Setia, learned counsel appearing for respondent No.1 and I.S. Parmar, learned counsel appearing for respondent No.2 submitted that no prejudice has been caused to the petitioner/co-defendant as all the alleged allegations in the present revision petition can be looked into when the parties will lead evidence in support of their respective pleadings, thus, urges this Court for upholding the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel for the petitioner, for, the respondent-plaintiff instituted the suit for specific performance of the agreement

to sell in respect of property owned by defendant No.1. It is yet to be decided whether defendant No.2 was authorized by defendant No.1 for entering into agreement to sell or not, for, it would be in the domain of the parties to the *lis* to lead evidence in that respect and each and every party, who has alleged adverse interest would be able to cross-examine the witnesses, if need be, but cannot be permitted to impede right of defendant No.2 when the plaintiff did not raise any objection.

In view of the aforementioned, the order under challenge does not suffer from any illegality and perversity, much less, cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No