

219

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-3924-2014

Date of decision : 21.02.2018

Amarjit Kaur

... Petitioner(s)

Versus

Vinay Kumar

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

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

Mr. D.S. Matya, Advocate,  
for the respondent

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**AMIT RAWAL, J. (ORAL)**

The petitioner being LR of defendant, namely, Gurmeet Singh is aggrieved of the impugned order dated 17.09.2011 (Annexure P-5) of the trial Court and order dated 14.03.2014 (Annexure P-7) passed by the lower Appellate Court, whereby an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the *ex parte* judgment and decree dated 14.12.2009 and *ex parte* order 20.12.2007 has been dismissed.

The respondent-plaintiff instituted a suit for recovery of ₹4,50,000/- on the premise that Gurmeet Singh (since deceased) had entered into agreement to sell dated 29.11.2016 in respect of land measuring 16 kanals for a consideration of ₹12 Lacs against the receipt of the earnest money of ₹2,25,000/-. The stipulated date for registration and execution of the sale deed was 15.11.2007. The defendant did not appear nor file the

written statement and was proceeded *ex parte*.

Mr. Deepak Sharma, learned counsel appearing on behalf of the petitioner-defendant submits that Gurmeet Singh had unfortunately expired on 02.03.2008, though the *ex parte* proceedings were initiated on 20.12.2007. The service of the aforementioned suit was not effected in accordance with law nor any procedure envisaged Order 5 Rule 20 CPC was followed. The application for setting aside the *ex parte* judgment and decree was moved on 31.03.2010, which has erroneously been dismissed. He further submits that no prejudice would be caused to the respondent-plaintiff, in case the suit is allowed to be contested on merits subject to any terms and conditions which this Court may deem fit and proper.

Mr. D.S. Matya, learned counsel appearing on behalf of the respondent-plaintiff submits that the petitioner-defendant had not been able to explain the reasons of their *bona fide* absence, rather the absence was wilful and intentional. It was an attempt to thwart the execution of the *ex parte* judgment and decree, which was a money decree and cannot be set aside at the sweet will of the defendant. This fact is supported from the fact that all the LRs of Gurmeet Singh had not brought on record with an intention that they may take objection at an appropriate stage to delay the adjudication of the suit, thus, urges this Court for upholding the impugned orders under challenge, which are based upon the appreciation of the evidence as summons were sent, but the service was refused by Mr. Amarjit Kaur, wife of Gurmeet Singh, which was witnessed by Ronki Ram, Chowkidar.

I have heard the learned counsel for the parties and appraised the paper book and of the view that no doubt the petitioner-defendant had

been negligent in not pursuing the matter, resulting into, *ex parte* judgment and decree, but the fact of the matter is that the Court below should have adopted a pragmatic and reasonable approach allowing the parties to contest the suit by fixing a timeline, subject to any terms and conditions. It is only Amarjit Kaur, wife, has come forward on record and not the other LR's. The apprehension of the respondent, in my view, is taken care from the *ratio decidendi* culled out by Division Bench of this Court in "**Sardara Singh and another v/s Harbhajan Singh and others, AIR 1974 345 (Punjab)**", wherein it has been held that once the estate of deceased is represented by one of the LR's, there is no necessity to bring on record the other LR's. If at the petitioner-defendant feels necessity to bring on record the other LR's, it is within their ambit, but the fact of the matter is that the estate of the deceased-Gurmeet Singh, would deem to have been represented by the petitioner-defendant only. The other LR's, in view of the *ratio decidendi* culled out in para No.10 of the judgment cited supra, would not agitate the issues by filing third party objection, in case of decretal of the suit.

As an upshot of my findings, the *ex parte* judgment and decree dated 14.12.2009 and impugned orders dated 17.09.2011 and 14.03.2014 (Annexures P-5 & P-7) are hereby set aside. The suit is ordered to be restored subject to the following conditions:-

1. The petitioner-defendant shall deposited 50% of the principal amount i.e. ₹2,25,000/- and an amount of ₹25,000/- as security to the extent of 25% within a period of one month from the date of the receipt of the certified copy of this order.
2. Since the respondent-plaintiff has unnecessarily been subjected to protracted litigation, I deem it appropriate to impose a cost

of ₹10,000/-, which shall be condition precedent.

The parties or through counsel are directed to appear before the trial Court on 20.03.2018 for compliance of the order. The petitioner-defendant shall file written statement within a period of 15 days and replication within 15 days thereafter. On framing the issues, the trial Court shall decide the suit within a period of one year by affording four-four effective opportunities to the parties in accordance with law.

The present revision petition stands allowed.

21.02.2018  
Yogesh Sharma

( AMIT RAWAL)  
JUDGE

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Whether speaking/reasoned    Yes/ No

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Whether Reportable    Yes/ No