

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

C.R No.4586 of 2016

Satpal Singh

....Petitioner

Versus

Jagga Singh

....Respondent

Date of Order: 05.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Sodhi, Advocate and
Ms. Harshita, Advocate for the petitioner.

AMIT RAWAL, J (ORAL)

The petitioner has directed this revision against the concurrent findings recorded by both the courts below vide which the application filed by him under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 12.5.2009 has been dismissed by the Civil Judge (Sr. Division), Jalalabad and the appeal preferred against the same also met with the same fate vide order dated 25.3.2016 by learned Addl. District Judge, Fazilka.

Plaintiff instituted the suit for specific performance of an agreement for sale dated 6.12.2004, which was decreed ex parte on 12.5.2009. The defendant-appellant acquired the knowledge of passing the judgment only when the plaintiff openly declared in the village that he had obtained the ex parte decree and immediately thereafter he filed the application under Order 9 Rule 13 CPC within one month.

Learned counsel for the petitioner submitted that the petitioner was not keeping well under depression and due to mental sickness, he was

not familiar with any kind of proceedings. He was not in a position either to accept or refuse the summons or notice because of being affected due to illness and taking undue advantage of his unconscious mind, his signatures were obtained on summons. There was no such wilful or intentional default on his part and therefore the courts below have wrongly dismissed his application. No harm and injury would be caused to the opposite side in case the matter is decided on merits subject to any terms and conditions.

In this case, notice was issued as far as back on 27.7.2006. Service was effected but there was no appearance despite service, which led to passing of ex parte judgment and decree.

After hearing learned counsel for the petitioner and perusing the case file, I find force in the submissions of learned counsel for the petitioner.

No doubt, the petitioner had not been diligent in pursuing his matter before the trial Court but he moved the application within the period of 30 days from the date of actual knowledge and for that reason, the Court had already taken aid of Article 123 of the Limitation Act.

Be that as it may, the Court should have noticed the fact that both the parties were present. The dispute was with regard to the land measuring 13 kanal 2 marla which was agreed to be sold by the petitioner for a total sale consideration of Rs.1,96,500/- vide agreement to sell dated 6.12.2004 out of which Rs.1,50,000/- is alleged to have been received by him. It is yet to be ascertained as to whether there was any bad intention on behalf of the petitioner qua the alleged transaction of the land. The court would have allowed the application and should not have dragged the litigation, which was continuing for long time.

In order to advance justice and prevent miscarriage of justice, present petition is allowed. The impugned orders are set aside and the suit is ordered to be restored subject to payment of Rs.10,000/- as costs to be deposited with the Punjab and Haryana High Court Lawyers Association Fund, which shall be a condition precedent. Parties through their counsel are directed to appear before the trial Court on 27.4.2018. Before proceeding with the matter, the trial Court shall inform the respondent of the same and act in accordance with law. It is made clear that the petitioner would not delay the trial while filing written statement.

April 05, 2018
manoj

^(AMIT RAWAL)
JUDGE

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