

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

145

CR No.7402 of 2017 (O&M)

Date of decision: 21.05.2018

Baljinder Singh

..... Petitioner

Versus

Avtar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Harsh Bungar, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Learned counsel for the respondent submits that his client is not responding to various calls made to him, hence, he pleads no instructions. Counsel for the respondent is permitted to withdraw from the case.

Defendant-petitioner is in the revision petition against the order passed by the learned trial Court affirmed by learned First Appellate Court refusing to set aside the ex parte judgment and decree.

Plaintiff had filed a suit for possession by way of specific performance of the agreement to sell. The defendant-petitioner was proceeded ex parte. Learned trial Court decreed the suit by ordering refund of the double of the earnest money.

The petitioner filed an application under Order 9 Rule 13, CPC as noticed above which has been dismissed.

Learned counsel for the petitioner has submitted that in absence of any evidence, the decree for refund of double of the earnest money could not be granted. He has further submitted that the petitioner in order to show his bona fide, is ready to deposit an amount of Rs.10,00,000/- within a period of six weeks.

Although, at the time of decision on the application under Order 9 Rule 13, the Court is not required to examine the case on merits, however, taking into consideration the fact that the petitioner in order to show his bona fide, is ready to deposit Rs.10,00,000/-, this Court is of the considered opinion that the petitioner should be granted opportunity to defend the case particularly when the decree passed ordering refund of double of the earnest money paid, is prima facie erroneous.

The interest of the plaintiff is being secured. As per the decree, he is entitled to refund only against which no appeal has been filed. It is also well settled that no one should be condemned unheard.

Keeping in view the aforesaid, the orders under challenge are set aside. The suit is restored to its original number subject to the petitioner depositing a sum of Rs.10,00,000/- with the Court which shall be invested in a fixed deposit in a nationalized bank earning maximum interest. It may be noted that it is the positive contention of the petitioner-defendant that no amount was paid to the petitioner pursuant to the aforesaid agreement to sell.

Be that as it may, the learned trial Court is requested to decide the suit after granting opportunity to the defendant-petitioner to file written statement as expeditiously as possible, preferably, within a period of six months.

The defendant-petitioner through his counsel is directed to appear before the learned trial Court on 11.07.2018. Learned trial Court would be at liberty to issue notice to the plaintiff.

Revision petition is allowed.

21.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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