

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

C.R. No.7489 of 2017

Date of Decision.12.02.2018

Bhushan Parkash

.....Petitioner

Vs

Bachan Singh and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jaivir S. Chandail, Advocate
for the petitioner.

Mr. Ranjit Saini, Advocate
for the respondents.

:-

AMIT RAWAL J.(ORAL)

The petitioner-defendant No.2 is in revision petition against the order declining the application moved under Order 9 Rule 13 CPC for setting aside the ex parte proceedings dated 26.05.2010 and judgment and decree dated 16.10.2010.

Mr. Jaivir S. Chandail, learned counsel appearing on behalf of the petitioner submits that the agreement to sell dated 21.07.2004 was entered between the plaintiff namely Bachan Singh-respondent with defendant No.1 namely Vikas Bhalla for total sale consideration of ₹2 lacs. The stipulated date for execution and registration of the sale deed was 19.06.2005. However, during the subsistence of the agreement, Vikas Bhalla sold the land to the petitioner vide sale deed dated 03.03.2005 pursuant to the agreement to sell dated 12.07.2004.

He further submitted that there is categoric pleading in the plaint that the vendee-plaintiff, Bachan Singh came to know on 06.04.2005 that the aforementioned property was sold by his vendor to petitioner-

defendant No.2 and was also dispossessed. The suit claiming the aforementioned relief was filed on 24.01.2006 in which vendor-defendant No.1, Vikas Bhalla was proceeded ex parte and defendant No.2 on 26.05.2010. Though at that time, the suit was listed for plaintiff's evidence and few of the witnesses have been cross-examined, the trial Court passed ex parte judgment and decree dated 16.10.2010. The application under Order 9 Rule 13 CPC was submitted on 27.08.2011 and the explanation given therein was that he was not informed by the counsel as to when his presence was required nor sent any intimation on phone call. Both the Courts below have abdicated in ascertaining the fact that no client can be made suffered on account of lapse of the counsel. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court in **Rafiq and another Vs. Munshilal and another AIR 1981 SC 1400** and urges this Court that technicality should not come in the way of the petitioner as no prejudice would be caused in case of setting aside the ex parte judgment and decree subject to any term and condition which this Hon'ble Court may deem appropriate.

Per contra, Mr. Ranjit Saini, learned counsel appearing on behalf of the respondent-plaintiff submitted that the petitioner-defendant No.2 during the pendency of the suit and operation of the restraint order had parted with the property to a third party vide sale deed of July, 2006. However, in pursuance to the ex parte judgment and decree in execution proceedings through the assistance of the Local Commissioner, sale deed 30.01.2015 was executed in favour of the plaintiff but the execution application vis-a-vis the possession is still pending adjudication. Therefore, he submitted that the petitioner-defendant No.2 has no locus standi to

espouse the cause in view of having parted with the title.

I have heard learned counsel for the parties, appraised the paper book and of view that there is no force and merit in the submissions of Mr. Chandail as noticed above with regard to filing of the suit. Execution of the sale deed dated 03.03.2005 parting with the title by petitioner-defendant No.2 in favour of third party and as well as execution of the sale deed dated 30.01.2015 in favour of the plaintiff are not in dispute. The only question which is to be looked into by this Court is whether the petitioner-defendant No.2 had given sufficient cause of having been prevented to appear in the Court or his intention was intentional or willful. The application dated 27.08.2011 was moved almost 10 months after the passing of the ex parte judgment and decree i.e. during the pendency of the execution application.

Explanation given as indicated above regarding the non-intimation of the proceedings by the counsel is most common and customary plea in blaming the counsel before the trial Court but the fact of the matter is that the relationship between the client and the advocate is fiduciary in nature and enjoin upon an obligation to sensitize each other about proceedings of the matter and the client cannot be permitted to put entire blame on the counsel. The petitioner-defendant No.2 was equally responsible for ascertaining the status of the suit, because an additional right had accrued owing to the fact that he parted with the party during the subsistence of the agreement to sell and was required to examine the witnesses in support of the same. Even the imposition of costs would not help the petitioner-defendant No.2, for, he has already parted with the title of the aforementioned property and third party has not approached so far. It is a clear attempt to cause impediment to the execution of the judgment and

decree with regard to possession, though the sale deed has already been executed as referred to above.

Keeping in view the aforementioned, I do not find any reason to interfere with the impugned order as the same cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 12, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No