

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

C.R.No.7927 of 2017

Inderjeet Singh

....Petitioner

Versus

Raghbir Singh and Anr.

....Respondents

Date of Order: 23.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Divanshu Jain, Advocate for the petitioner.

Mr. Parminder Pal Singh Thethi, Advocate
for respondent No.1.

AMIT RAWAL, J (ORAL)

Petitioner-defendant No.1/vendor is in revision against the impugned orders dated 27.2.2015(P.6) and 31.7.2017 (P.7) whereby application filed by the petitioner under Order 9 Rule 13 CPC for setting aside ex parte judgment and decree dated 06.2.2008 has been dismissed and the appeal against the said order has also been dismissed by the Appellate Court.

Facts of the case in brief are that the respondent-plaintiff instituted the suit for possession by way of specific performance of agreement to sell dated 14.5.2002 in respect of the suit land. Stipulated date for execution and registration of the sale deed was fixed as 15.11.2002. On entrustment of the suit, the trial Court issued notice to the defendant-petitioner, however, the petitioner-defendant could not be served for want of his correct address. For three occasions, the matter was adjourned for the aforesaid purpose. On 03.2.2006, while adjourning the matter to 05.4.2006, correct address of the petitioner was ordered to be furnished. However, in the meantime, the respondent-plaintiff furnished the correct address, though on 05.4.2006, the petitioner-defendant was proceeded ex parte. Ultimately,

an ex parte judgment dated 06.2.2008 came to be passed. On acquiring the knowledge, the application under Order 9 Rule 13 CPC was filed by the petitioner on 18.3.2008, which has been dismissed vide the impugned orders.

Learned counsel for petitioner-defendant submitted that both the courts below have misconstrued the pleadings of the parties as well as settled principles of law, for, certain moot points involved to be adjudicated by both the courts below with regard to readiness and willingness etc. Application under Order 9 Rule 13 CPC moved by the petitioner remained pending from 18.3.2008 and it came to be decided only on 27.2.2015 i.e after about seven years. He submitted that the courts below could have permitted the defendant for filing written statement in time bound manner subject to any terms and conditions and prayed for one opportunity to defend the suit.

Per contra, learned counsel for the respondent-plaintiff submitted that after 03.2.2006, fresh address of the petitioner was furnished to the court below and the petitioner was served on 11.3.2006 and was proceeded against ex parte on 05.4.2006 since he did not appear even after 3.30 P.M. It was deliberate attempt on behalf of the petitioner-defendant in order to delay the proceedings and he intentionally moved the application for setting aside the ex parte judgment. He, thus, urged for dismissal of the present petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book. The facts noticed hereinabove are not in dispute. The only point to be seen is whether the petitioner was actually served or not.

Be that as it may, learned counsel for the respondent-plaintiff

has shown a copy of the summons whereby second address of the petitioner is reflected on which the petitioner is purported to have been served. The petitioner had throughout not been diligent in pursuing the litigation and the explanation tendered in this respect was not plausible thereby leading into dismissal of the application.

Both the courts below remained oblivious of the fact that the application under Order 9 Rule 13 CPC remained pending from 18.3.2008 and certain time could have been granted to the petitioner. In order to prevent miscarriage of justice, in my view, one opportunity should be granted to the petitioner subject to payment of Rs.50,000/- as costs as has already been observed by this court while issuing notice of motion.

Resultantly, present petition is allowed subject to payment of Rs.50,000/- as costs to be paid to the respondent before the trial court, which shall be a condition precedent. The impugned order is set aside with the direction that the petitioner-defendant No.1 shall file written statement within 15 days from the date of receipt of certified copy of this order and the respondent-plaintiff shall also have opportunity to file replication thereafter within another period of 15 days. It is directed that the trial Court shall undertake the exercise of admission and denial and thereafter from the pleadings of parties shall frame the issues. Both the parties are afforded three effective opportunities each to lead their evidence. Since number of years have gone by, I deem it appropriate to direct the trial Court to undertake the entire exercise expeditiously, preferably within a period of eight months.

May 23, 2018
manoj

^(AMIT RAWAL)
JUDGE

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