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

CR No. 8514 of 2017

Date of Decision: 09.08.2018

Kuldeep Kaur (now deceased) through her LR

....Petitioner

Vs

Surinder Kaur @ Mrs. Surunder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gurmohan Singh Bedi, Advocate,
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

1. This revision petition has been preferred by the petitioner against the order dated 20.09.2017 passed by Additional District Judge, Patiala vide which appeal filed by the appellant against respondents No.1 and 2 was dismissed for want of compliance.

2. A suit for possession by way of specific performance of agreement to sell dated 25.09.1998 in respect of house property was filed by the plaintiff/petitioner- Kuldeep Kaur against the respondents namely Surinder Kaur, Narinder Singh and Baljit Singh.

3. Mr. Baljinder Singh, Advocate represented defendants No.2 and 3 in the trial Court whereas defendant

No.1 was proceeded against exparte. The suit was ultimately dismissed by the trial Court vide judgment and decree dated 17.12.2016 and an appeal was filed by the plaintiff-petitioner before the lower Appellate Court.

4. Learned counsel for the petitioner has also referred to a fact that respondent No.2 was also proceeded against exparte before the trial Court and he moved an application for setting aside order dated 13.08.2014 through his Power of Attorney- Baljit Singh i.e. respondent No.3. After dismissal of the said application, even Civil Revision No.2021 of 2015 was also filed by respondent No.2 through his Special Power of Attorney- Baljit Singh.

5. Vide order dated 26.07.2017 passed by Additional District Judge, Patiala, it was recorded that respondents No.1 and 2 were not served for want of correct addresses.

6. Since, Mr. Baljinder Singh, Advocate had represented defendants No.2 and 3 before the trial Court, therefore, statement of fact was made by learned counsel for the petitioner before the lower Appellate Court that respondent No.3 is also a Power of Attorney of respondent No.2.

7. Learned counsel for respondent No.3 was ordered to verify the said fact. It appears that on 26.07.2017, the case was adjourned to 23.08.2017 i.e. the date on which it was again

recorded that respondents No.1 and 2 were not served for want of complete addresses and compliance was ordered to be made within three days on filing correct addresses. Last opportunity was granted for doing the needful. The case was adjourned to 20.09.2017. On 20.09.2017, the impugned order came to be passed.

8. Perusal of order dated 26.07.2017 would show that learned counsel for respondent No.3 was ordered to verify factum of his engagement qua respondent No.2 on the basis of respondent No.3 being Power of Attorney of respondent No.2. The said fact was not ascertained by learned counsel for respondent No.3 and the lower Appellate Court passed the impugned order dismissing the appeal for want of compliance of submission of correct addresses.

9. It appears from the record that respondent No.1 was already exparte before the trial Court. Respondent No.3 was duly represented by Mr. B.S. Saini, Advocate. Factum of respondent No.2 whether represented by his Special Power of Attorney i.e. respondent No.3 or not was to be ascertained by learned counsel for respondent No.3 but before such ascertainment, impugned order came to be passed.

10. In my considered opinion, the impugned order is harsh. The lower Appellate Court ought to have verified the

factum of acceptance of Special Power of Attorney of respondent No.2 in favour of respondent No.3 and after establishing the fact, a lawful order could have been passed.

11. In view of above, I deem it appropriate to set aside order dated 20.09.2017, restoring the appeal qua respondents No.1 and 2, however, with a direction to the lower Appellate Court to pass fresh order after ascertaining status of respondent No.3 on the basis of assertion made by learned counsel for the petitioner at the time of passing order dated 26.07.2017.

12. The lower Appellate Court shall take into consideration the aforesaid circumstances while passing fresh order in accordance with law.

13. Disposed of.

09.08.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No