

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.924 of 2014 (O&M)
Date of decision:25.05.2018

Dharminder Kaur and others

... Petitioners

Vs.

Mehal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harsh Aggarwal, Advocate
for the petitioners.

Mr. J.S.Brar, Advocate
for respondent No.1.

AMIT RAWAL J.

The present revision petition is directed against the impugned order dated 15.12.2010 (Annexure P-3), whereby, the application filed by the petitioner-defendants No.1 to 3 for setting aside the ex parte judgment and decree dated 10.12.2005 (Annexure P-2), had been dismissed and judgment dated 21.10.2013 (Annexure P-4), vide which appeal laid against the aforementioned order before the Lower Appellate Court, had also been dismissed.

It would be in the fitness of things to refer brief facts for adjudication of the present revision petition.

The respondent-plaintiff instituted the suit for specific performance of the agreement to sell which as per the averments made in

the revision petition is stated to be only receipt dated 1.6.1995 (Annexure P-1), whereby, a sum of ₹1,50,000/- on various dates was paid for 2 ½ acres (20 kanals) of land in Mehndipur, whereas, the suit was filed on 27.11.2003 (Annexure P-2). The address of the defendants given in the plaint was residents of village Mehndipur, Tehsil Patti, District Amritsar. It was averred in the suit that defendants no.4 to 32 alleged themselves to be co-sharers and therefore, were arrayed as parties. The other defendants including the petitioners were proceeded against ex parte, whereas, defendant no.15 contested the suit. The suit was decreed, vide judgment and decree dated 10.12.2005, whereby, instead of granting the discretionary relief, an alternative relief of refund of earnest money of ₹1,50,000/- alongwith interest @ 12% per annum from the date of filing of suit till passing of the decree and 6% per annum from the decretal till realization, was granted.

The petitioners filed misc. appeal No.13 of 2006 for setting aside the aforementioned judgment and decree on the ground that plaintiff fraudulently with the connivance of process serving agency obtained an ex parte judgment and decree dated 10.12.2005. However, knowledge of ex parte judgment and decree was acquired from one Lakha Singh son of Jeon Singh resident of village Dubli Tehsil Patti, District Taran Tarn on the ground that service was not effected upon the petitioner-defendants No.1 to 3 or postman ever approached for delivering the registered cover. Neither munadi was conducted nor petitioners were personally served in the

aforementioned case. The plaintiff had intentionally given the incorrect address of the petitioner-defendant No.1 to 3, whereas, for the last more than 20-25 years, they were residing in Toot, Tehsil Patti, District Taran Taran. The copies of ration card and voter list, were also enclosed.

The application was contested by the respondent-plaintiff. The trial Court on the basis of evidence led on the issues framed in the application, dismissed the same on the ground that petitioner-defendant No.1 to 3 had not been able to explain day to day delay and the application was beyond the period of limitation. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the petitioner-defendants No.1 to 3 submitted that the Court below had not adverted to the categorical pleadings/averments in application regarding the address that itself was a clincher for the Court below to allow the application, for, when there is fraud, it vitiates everything. It was not commercial transaction on which interest of 12% per annum had been awarded in the suit filed on 27.11.2003. No explanation has come forth in not filing the suit within a period of limitation, for, it was not case of actual agreement to sell containing terms and conditions except receipt dated 01.06.1995, in other words, he submitted that suit was *ex facie* barred by law of limitation. The documentary evidence regarding voter list and ration card had been placed on record but the same were erroneously not adverted to.

Per contra, Mr. J.S.Brar, learned counsel appearing on behalf of respondent No.1 submitted that no explanation has come forth in explaining the alleged knowledge stated to have been acquired from Lakhwinder Singh, for, Lakhwinder Singh had not been examined, therefore, the application had rightly been dismissed. The petitioners have miserably failed to prove the particular date or cause of action regarding the ex parte judgment and decree and thus, urged this Court for upholding the order and judgment under challenge on the basis of the appreciation of evidence, for, there was no infirmity or illegality in the order and judgment under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Harsh Aggarwal, for, the focus of the trial Court and the Lower Appellate Court was only on the point that application was beyond the limitation but failed to advert the fact that address given in the plaint was not correct. For the sake of brevity, address given in the plaint (Annexure P-2) reads thus:-

“Residents of village Mehdiapur, Tehsil Patti, District Amritsar.”

whereas, concededly address given in the application and proved on record is as under:-

“Residents of village Toot, Tehsil Patti, Distt. Tarn Taran.”

This fact has not been denied by the respondent-plaintiff. Nor

any explanation has come forth for not giving the aforementioned address. In such circumstances, in my view, the Court below ought not to have non-suited the petitioners on the ground of limitation, for, I would not be commenting upon that it was a case of fraud but was an attempt of furnishing correct address and in such circumstances, technicalities of law should not have come in the way of the aggrieved party. The respondent-plaintiff, in my view, unnecessarily contested the application filed in 2006 which has been decided after four years, i.e., on 15.12.2010 and then contested the appeal which was decided in 2013.

As an upshot of my findings, the application for setting aside the ex parte judgment and decree is allowed and the ex parte judgment and decree is set aside. The revision petition is disposed of in the following terms:-

- i) There shall be costs of ₹10,000/- which shall be a condition precedent.
- ii) The parties are directed to appear before the trial Court on 17.7.2018.
- iii) On appearance, petitioners/defendants No.1 to 3 shall file written statement alongwith relied documents within a period of 30 days and thereafter, replication, if any within a period of 15 days.
- iv) The trial Court shall undertake the exercise of the admission and denial and frame the issues on which parties are

at variance.

v) The trial Court shall afford 4-4 effective opportunities spanning for a period of two months to each of the parties, in essence, two months to plaintiff and two months to the defendants and the parties for summoning the witnesses, will take assistance of the Court, if necessary.

vi) The trial Court shall thereafter decide the suit as expeditiously as possible preferably within a period of four months.

(AMIT RAWAL)
JUDGE

May 25, 2018
savita

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No