

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

C.R. No.2371 of 2015

Date of Decision.08.01.2019

Pritam Kaur

...Petitioner

Vs

Gurbax Singh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Deepak Sharma, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the orders dated 04.03.2015 (Annexure P-1) and 21.05.2014 (Annexure P-2) whereby application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 09.04.2011 passed in civil suit seeking specific performance of agreement to sell, has been dismissed.

The respondent-plaintiff instituted the suit on 24.12.2003 for specific performance of agreement to sell dated 29.09.2000 wherein the petitioner-defendant was proceeded ex parte on 11.09.2007, resulting into passing of the aforementioned judgment and decree. The application for setting aside the ex parte judgment and decree was filed on 16.03.2013.

Mr. Jain, learned counsel appearing on behalf of the petitioner submitted that trial court did not comply with the provisions of Order 5 Rule 17 CPC, while passing the ex parte order dated 11.09.2007. In support of aforementioned contention, relied

upon judgment of this Court rendered in *Palo Vs. Ajai Singh and others (2010-3) Vol. CLIX 143* whereby it has been held that in view of non-compliance of aforementioned provisions, the entire proceedings are vitiated in law. The objection qua limitation has been proved through the specific question in cross-examination to petitioner, AW5, where she admitted that Gurbax Singh and others had visited her premises on 14.02.2013 whereas the application was filed on 16.03.2013 i.e. within 30 days. No harm and prejudice would be caused to the plaintiff in case opportunity of hearing is given to defend the case by fixing the time line, subject to any terms and conditions, which this Court deems appropriate.

Mr. Sharma, learned counsel appearing on behalf of the respondents submitted that order under challenge raising the application was bereft of any compliance of provisions regarding the acquisition of knowledge. In the absence of the same, application was hopelessly time barred. There is no whisper of averment with regard to acquisition of knowledge and filing of the application within 30 days. A person has to stand on his own legs and cannot rely upon one line here and there in the cross-examination. Address given in the memo of parties was in tandem with the particulars mentioned in the agreement to sell. No contrary evidence to belie the same has been brought on record. In such circumstances, non-compliance of provisions of Order 5 Rule 17 CPC would not be material, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the

submissions of Mr. Jain. The order dated 11.09.2007 proceeding the petitioner ex parte reads as under:-

“Present: Shri S.M. Sharma, counsel for the plaintiff.

Notice issued to defendant through registered cover received back with the report of refusal. Case called several times but defendant has failed to appear. It is already 3.00 PM. No more wait is justified. One month of the date of registered AD has expired. In view of the same, defendant is proceeded against ex parte. In view of the same, defendant is proceeded against ex parte. To come up on 21.4.08 for ex parte evidence of the plaintiff. Long date is given due to heavy pendency.

*Sd/-
Sunita Grover
ACJ(SD)/11.9.07”*

Rule 17 of Order 5 CPC enjoins duty upon the Court to follow the procedure. There is no dispute to the ratio decidendi culled out in **Palo's case** (supra). Be that as it may. The application submitted on 16.03.2013 did not aver specific pleading qua acquisition of knowledge. It is mandatory requirement of knowledge to overcome the rigour of limitation, as period of 30 days has been provided from the acquisition of knowledge to file the application. There is no whisper in the statement, even if application was bereft of the pleadings. One line in the cross-examination would not overcome

the hurdle of limitation as sought to be projected by Mr. Jain.

Mr. Sharma, during the course of hearing brought to the notice of the Court regarding transfer of the property by the petitioner in favour of her husband, in order to frustrate the agreement. This fact has not been denied. The finding of fact arrived at by the courts below dismissing the application cannot be faulted with and said to be suffered from illegality or without jurisdiction.

The impugned orders are upheld and the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

January 08, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No