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

C.R. No.4659 of 2016 (O&M)
Date of Decision.27.02.2019

Har Narayan (since deceased) through LRs ...Petitioner

Vs

Suresh Kumar and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.D. Achint, Advocate
for the petitioner.

Mr. Abhimanyu Singh, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed at the instance of the petitioners-defendants againt the orders dated 28.11.2014 (P-2) and 09.05.2016 (P-4) whereby application for setting aside the ex parte judgment and decree dated 10.08.2011 has been dismissed by the trial Court as well as by the lower Appellate Court.

Mr. N.D. Achint, learned counsel appearing on behalf of the petitioners submitted that respondents-plaintiffs instituted the suit for specific performance of agreement to sell dated 14.05.2004. Har Narayan (since deceased) their father appeared through counsel and submitted written statement but later on during the pendency of the suit died on 26.11.2005. Plaintiff submitted an application for bringing on record the legal representatives and counsel representing Har Narayan gave no objection without any authority or instructions as petitioners were not informed. For the reasons best known to him, proceeded ex parte on 26.02.2010 and petitioners-defendants came to

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know about the ex parte judgment and decree in the first week of June, 2012 and accordingly application dated 16.07.2012 (Annexure P-1) was submitted.

The aforementioned application was opposed and the trial Court without noticing the fact that no summons were issued to the legal representatives nor any vakalatnama was filed by the counsel, dismissed the application. It is apparent collusion of the counsel with the plaintiffs and in such circumstances, legal representatives of defendant should not be made suffer for the lapse of the counsel. Limitation would only run from the acquisition of knowledge and not from the date when the cousnel did not put appearance i.e. in June, 2012, thus, urges this Court for setting aside the orders under challenge and opportunity of hearing be given to lead evidence to belie stand of the plaintiffs-respondents.

Per contra, Mr. Abhimanyu Singh, learned counsel appearing on behalf of the respondents-plaintiffs supported the impugned orders on the premise that counsel for the petitioners continued to appear for three years. The application was wholly belated, as no action was taken against the against the advocate for his alleged lapse.

I have heard learned counsel for the parties and appraised the paper book. The date of the agreement to sell, death of Har Narayan, impleadment of legal representatives, appearance of counsel representing their father without any vakalatnama on behalf of legal representatives are not in dispute but the question arises is whether the counsel representing Har Narayan had authority or power

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of attorney of the legal representatives or informed them for defending the suit. There is nothing on file to establish that vakalatnama of the petitioners-defendants by the counsel representing Har Narayan was submitted. The law with regard to the conduct of the lawyer is no longer *res integra* in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Himalayan Coop. Group Housing Society Vs. Balwan Singh (2015) 7 SCC 373***. The Courts in case where counsel does not appear or pleads no instructions should send notice to the party to prevent such type of pinquent situation for adjudication of the suit and implementation of the judgment and decree. Had that steps been followed, situation as indicated above would not have occurred.

Both the Courts below did not appreciate the aforementioned facts and more than six years before the courts below and two years in this Court have lapsed. By this time, trial would have been commenced and decided, much less, appeal by the lower Appellate Court. Be that as it may, petitioners were also obligated to have some kind of regard to the setiments of their father, who had been defending the suit by approaching the counsel. Such a callous attitude is liable for imposition of costs for the wastage of time and delay in implementation of the judgment and decree.

For the reasons aforementioned, orders under challenge are set aside. The application filed under Order 9 Rule 13 CPC is allowed. The ex parte order dated 26.02.2010 and judgment and decree dated 10.08.2011 are set aside. The suit is restored to its original number.

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Parties through their counsel shall appear before the trial court on 04.04.2019. The trial Court shall make an endeavour to dispose of the suit as expeditiously as possible and preferably within a period of one year after affording 4-4 effective opportunities to the parties. However, it shall be subject to the costs of ₹1 lakh to be paid to the respondents-plaintiffs, which shall be condition precedent. Defendants shall file written statement within 15 days from the date of appearance and after that the court shall frame the issues. The trial Court shall follow the procedure for admission and denial in order to curtail variation in the pleadings and lay focus only on the issues which arises.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

February 27, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No

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